

## THE STATE OF BOMBAY

v.

FAKIR UMAR DHANSE.

(J. L. KAPUR and J. C. SHAH, J.J.)

1961

February 3.

*Unalienable agricultural land—Occupant—If could alter the user to non-agricultural purposes—Unauthorised structures—Nature of right of Revenue Authorities to evict—Words “eviction” and “Vacation” meaning of—The Bombay Land Revenue Code, 1879 (V of 1879), s. 66.*

The respondent who was the occupant of an unalienated land had erected several structures on it without obtaining the prior permission of the Collector and became liable to be evicted. The Collector served a notice of eviction on the respondent under s. 66 of the Bombay Land Revenue Code and called upon him to remove the unauthorised structures. On the respondent not having complied with the notice, he was evicted from the land and some of the buildings were demolished.

The High Court held that the order directing the removal of the structures was *ultra vires* of s. 66 of the Bombay Land Revenue Code and though the order of eviction was legal and *intra vires* but in spite of the eviction, the land or the buildings did not vest in the Government and the occupant continued to be the owner of the building and the land and the only consequence of eviction was physical removal of the occupant from the land.

The question was whether the occupier who had been evicted was required to remove the building and in default could the collector demolish the building and was liable to damage for such demolition.

*Held*, that on a true construction of ss. 65 and 66 of the Bombay Land Revenue Code an occupant was only entitled to the use and occupation of unalienated land for the purpose of agriculture, and could not alter the user to non-agricultural purposes except with the permission of the Revenue Authorities, and any such altered user entitled the Revenue Authorities to summarily evict the occupant from the land and once evicted the right of user and occupation could not be exercised by him.

The words “eviction” and “vacation” did not mean mere physical removal of the occupant, they meant that his rights came to an end. For the purpose of “vacation” it was necessary that any unauthorised construction put up must also be removed, and no specific powers were necessary for such removal, the power to remove them was incidental and ancillary to the powers to evict and to get the land vacated.

The true effect of eviction was physical removal of the occupant from the land with all the consequences, i.e., demolition of all unauthorised superstructure,

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The word "eviction" as used in s. 66 of the Code meant that on eviction, land had to be restored to the original position so as to be used for the purpose for which it was given to the occupant.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 377 of 1957.

Appeal from the judgment and decree dated September 24, 1954, of the Bombay High Court in First Appeal No. 355 of 1950.

*R. Ganapathy Iyer, K. L. Hathi and D. Gupta*, for the appellant.

*B. D. Sharma*, for the respondent.

1961. February 3. The Judgment of the Court was delivered by

Kapur J.

KAPUR, J.—This is an appeal against the judgment and decree of the High Court of Judicature at Bombay. The appellant was the defendant in a suit brought by the respondent who was the plaintiff and the facts giving rise to the appeal are these:

The respondent was the occupant of unalienated land, Survey No. 145, Hissa No. 2 of Mahad in the district of Colaba. He applied on November 1, 1941, to the Collector for permission to construct a temporary shed for one year on the above mentioned land and permission was granted on January 9, 1942. The respondent made another application for extension of the period of the permission by two years. On enquiry it was found that the respondent had constructed permanent structures without leaving an open space of 20 feet between the road and the building and when asked to leave this space open he refused to do so and therefore the application dated September 9, 1942, was dismissed. On March 28, 1943, the respondent made another application stating that he was prepared to remove the building which was within 20 feet of the road. The Collector accepted this request and asked the respondent to remove that portion of the building which was within 20 feet from the road. While the correspondence was going on between the respondent and the Collector, the respondent put up several structures which, for some reason

or another, the Collector knew nothing about and it was in March, 1947, that the Collector asked the respondent to stop further building. On April 21, 1947, the respondent made another application to the Collector stating that he had begun to construct another building and asked for permission to complete it. It was then that the Collector made an inquiry and found that several buildings had been constructed deliberately without any permission. The Collector then asked the permission of the Government to take further action and on September 23, 1947, the Government accorded sanction in pursuance of which the Collector directed the Mamlatdar to evict the respondent. On October 19, 1947, the Mamlatdar served a notice upon the respondent for evicting him. The respondent thereupon appealed to the Bombay Revenue Tribunal and his appeal was dismissed on April 2, 1948. Another notice was served on the respondent calling upon him to remove the unauthorised structures. As he did not comply with the notice, he was evicted from the land and some of the buildings were demolished.

The respondent in August, 1948, filed a petition in the High Court and obtained an order of stay of the order of the Government and in execution of that order obtained possession of the land and then did not prosecute his petition. Thus in spite of his having flouted the orders made by the Revenue authorities, the respondent managed to get the possession of the land from which he had been evicted. On November 23, 1948, the respondent filed a suit for declaration that the order passed by the Government directing his eviction was illegal and void and for injunction restraining the Government from taking any action pursuant to that order and for recovery of Rs. 7,000 as damages for the portion of the building demolished by the Revenue authorities. The Civil Judge held that the buildings erected were unauthorised as the respondent had not obtained the permission of the Collector but he held that the Collector had no power under s. 66 of the Bombay Land Revenue Code (hereinafter termed the Code) to demolish the building. He

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decreed the suit in regard to the eviction holding the order of the Government and by the Collector as *ultra vires* and inoperative and issued an injunction against the appellant and also decreed the suit for Rs. 7,000 as damages for demolition of the structures. The appellant then took an appeal to the High Court and it was there held that the orders directing removal of structures was *ultra vires* of s. 66 of the Code and the injunction was therefore confirmed as also the decree as to the award of damages. The High Court further held that the order of eviction was legal and *intra vires* but in spite of the eviction, the land or the buildings did not vest in the Government and the occupant continued to be the owner of the buildings and the land and the only consequence of eviction was the physical removal of the occupant from the land. To put it in the language of the High Court it was held:—

“The legal consequences of eviction therefore will be to deprive the occupant of his possession of the land but not of his ownership or proprietary rights, which will continue to vest in him. As a corollary it must follow that the building erected by the occupant on the land will also continue to belong to him. We are also of the opinion that the power given to the Collector to evict the occupant does not include the power to remove a building erected by him.”

It is against this judgment and decree that the appellant has come in appeal to this Court on a certificate of fitness by the High Court.

There is no dispute in this appeal as to the order of eviction. The question which was debated was the consequences of this eviction. Was the respondent required to remove the building and in default can the appellant demolish the building and (2) is the appellant liable to damages for the demolition of the portion which it had already demolished? This would depend upon the interpretation to be put on some of the provisions of the Code. The Collector, after getting the permission of the Government directed, by his order dated October 10, 1947, the removal of

the structures unauthorisedly erected by the respondent and the action purported to have been taken under s. 66 of the Code. Section 45 of the Code provides that all land whether used for purposes of agriculture or other purposes and wherever situated is liable to payment of land revenue to Government and under s. 56 failure to pay land revenue makes the occupancy liable to forfeiture. Sections 65 and 66 of the Code provide :

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S. 65. " An occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives to erect farm buildings, construct wells or tanks or make any other improvements thereon for the better cultivation of the land or its more convenient use for the purpose aforesaid.

But if any occupant wishes to use his holding or any part thereof for any other purpose, the Collector's permission shall in the first place be applied for by the occupant....."

S. 66. " If any such land be so used without the permission of the Collector being first obtained or before the expiration of the period prescribed by section 65 the occupant and any tenant or other person holding under or through him shall be liable to be summarily evicted by the Collector from the land so used and from the entire field or survey number of which it may form a part and the occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of section 48 for the period during which the said land has been so used such fine as the Collector may subject to the general orders of the State Government direct.

Any tenant or any occupant or any other person holding under or through an occupant who shall without the occupant's consent use any such land for any such purpose and thereby render the said occupant liable to the penalties aforesaid, shall be responsible to the said occupant in damages."

It has been found that the respondent erected several structures without obtaining the prior permission of

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the Collector and he was liable to be evicted, and therefore the order passed by the Collector directing the eviction of the respondent was legal and *intra vires*. Under s. 65 an occupant of land held for the purpose of agriculture may erect farm buildings, construct wells or tanks or make other improvements for the better cultivation of the land or for its more convenient use for the purpose of agriculture but he cannot alter the user to non-agricultural purposes except with the permission of the Revenue authorities. This shows that any user unconnected with agriculture is unlawful and under s. 66 therefore any such altered user entitles the Revenue authorities to summarily evict the occupant from the land and certain other consequences follow. Therefore on a true construction of ss. 65 and 66 an occupant is only entitled to the use and occupation of unalienated land subject to the limitation above mentioned and if he is once evicted under the provisions of s. 66 of the Code the right of user and occupation cannot be exercised by him.

Section 202 of the Code lays down the procedure for evicting any person unlawfully in possession of the land and provides as follows :

S. 202. "Whenever it is provided by this, or by any other Act for the time being in force, that the Collector may or shall evict any person wrongfully in possession of land, such eviction shall be made in the following manner, viz. :

by serving a notice on the person or persons in possession requiring them within such time as may appear reasonable after receipt of the said notice to vacate the land,

....."

This section therefore shows that eviction requires vacation of the land and vacation does not mean that anything done upon the land which was unauthorised is to be allowed to remain and only the person responsible for doing the unlawful act is to be removed from the land. That the words "eviction" and "vacation" do not mean mere physical removal of the occupant is clear from the very nature of the right which the respondent in the present case had. His right was

confined to the use and occupation of the land for the purpose for which he held it from Government, i.e., for agricultural purposes and when he is evicted and is asked to vacate the land, it must mean that his rights come to an end. For the purpose of vacation it is necessary that any unauthorised construction put up must also be removed otherwise there cannot be any vacation of the land nor can the land be put to effective use for the purpose for which agricultural lands are normally accepted to be used. It is not necessary to hold in this case as to whether on eviction the occupant also loses his right to the materials of the superstructure but it would be a misinterpretation of the words "eviction" and "vacation" of the land if it were held that although the occupant is evicted the structures erected by him cannot be removed and if the Government tries to restore the land to the original purpose for which it was granted then it will do so only on the pain of being mulcted in damages. It is, in our opinion, not necessary to have any specific power to have the land vacated of all unauthorised superstructures; the power to remove them is incidental and ancillary to the power to evict and to get the land vacated. It appears to us that the nature of the right of occupancy and the limitation placed upon it by the provisions of the Code contained in ss. 40 and 41 by which the right to certain trees on unalienated land is reserved to the State; in ss. 65 and 66 which have been quoted above and ss. 68 and 69 which provide that an occupant is entitled to the use and occupation of the land for the period to which his tenure is limited shows that the true effect of eviction is the physical removal of the occupant from the land with all the consequences, i.e., demolition of all unauthorised superstructures. The High Court relied upon the difference in the language used in ss. 61 and 66 of the Code and to the amendment made in the former section in 1919 by which the words "or to summary removal" were added in s. 61 and the relevant portion of the section now reads as under:—

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S. 61. "The person unauthorisedly occupying any such land may be summarily evicted by the Collector, and any crop raised in the land shall be liable to forfeiture, and any building, or other construction erected thereon shall also, if not removed by him after such written notice as the Collector may deem reasonable, be liable to forfeiture or to summary removal."

From the addition of these words it was sought to be argued that these words were added to authorise the Collector to remove any building or other construction put up on that land by a person in unauthorised occupation and it was argued that those words were specifically added for the purpose. It is wholly unnecessary for us to go into the question as to why that particular power was given to the Collector. In this case we are concerned with the meaning of the word "eviction" as used in s. 66 and in our opinion the meaning of those words is that on eviction land has to be restored to the original position so as to be used for the purpose for which it was given to the occupant.

For the reasons given above this appeal is allowed and the decree of the High Court affirming that of the trial court is set aside. The appellant will have its costs throughout.

*Appeal allowed.*

M/S. JETHANAND AND SONS

v.

THE STATE OF UTTAR PRADESH.

(J. L. KAPUR and J. C. SHAH, JJ.)

*Appeal to Supreme Court—Certificate of fitness by High Court—Remand order, if and when final order—Substantial question of law—Power of High Court—Constitution of India, Art. 133—Code of Civil Procedure, 1908 (V of 1908), s. 109.*

Pursuant to an agreement between the parties a dispute relating to the supply of stone ballast was referred for adjudication to an arbitrator who was appointed under the agreement. The arbitrator's awards were contested by the appellants but the trial court held that the dispute was properly referred and the awards were validly made. The High Court set aside the orders

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