

## APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.

NARAYANA (DEFENDANT), APPELLANT,

v.

RAMACHANDRA AND OTHERS (PLAINTIFF'S REPRESENTATIVES),  
RESPONDENTS.\*

1890.  
July 16, 23.

*Land Acquisition Act—Act X of 1870—Land given as compensation—Regulation  
II of 1893 (Madras), s. 44—Darkhast rules.*

The owner of certain land taken up under the Land Acquisition Act, after the amount of compensation had been fixed, conveyed her interest to the present defendant, who applied for the land now in dispute in lieu of compensation, it being then Government waste, and this application was granted and the deed of exchange executed. The plaintiff and another had previously applied under darkhast rules for the land now in dispute, but the Collector ordered the land to be placed in possession of the defendant. The Board of Revenue, however, directed that the land be made over to the prior darkhastdars on terms which were complied with and they were put into possession. The plaintiff having been subsequently dispossessed by the defendant, now sued for a declaration of title and for possession:

*Held*, that the plaintiff was entitled to the land as against the defendant.

SECOND APPEAL against the decree of C. Ramachandra Ayyar, Acting District Judge of Nellore, in appeal suit No. 98 of 1888, confirming the decree of T. Ramachandra Row, District Munsif of Nellore, in original suit No. 371 of 1887.

Suit for a declaration of title to, and for possession of, certain land. The plaintiff and one Ragavachari (deceased) were the owners of the land adjoining the land in question in the suit; about 10 years before suit, they had darkhasted for the land now in question and the plaint set out that they had paid Rs. 300 and been put in a possession on the 29th of March 1887 and that the plaintiff had since been dispossessed by the defendant of the moiety of the land of which he had been put into possession.

It appeared that certain land belonging to one Kamakshamma was taken up by Government under the Land Acquisition Act in December 1884; the compensation was agreed upon in the following month and shortly afterwards Kamakshamma sold her interest to the present defendant, who applied for the land now in suit, which was then Government waste in lieu of money compensa-

\* Second Appeal No. 621 of 1889.

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tion. This application was granted as appears by exhibit D, which is referred to in the judgment, being a letter from the Collector of the district to the Board of Revenue, in which reference was made to G.O., No. 66, dated 15th of January 1885, of which paragraph 2 is as follows :—

“ When the amount of compensation has been determined by the Court, it will of course be open to the zamindar to accept a reduction of peishkush or to demand payment of the amount awarded by the Court.”

The Collector expressed the opinion that “ in allowing the money compensation to be commuted to land compensation ” he acted in accordance with the spirit of that paragraph “ which,” he added “ clearly recognises the principle that it is not binding on us to pay money compensation only, though it may be awarded to suit the requirements of law, whether the party desires to have either money or land.”

On the 14th of October 1885, the plaintiff and Viraragavacharu protested against the grant of the land to the defendant, and, in right of their darkhast, offered to pay to Government the compensation money fixed for the land of Kamakshamma. This application was refused by the Collector and the defendant was put into possession; the plaintiff and Ragavacharu appealed to the Board of Revenue, who, on receipt of the letter from the Collector alluded to above, directed that the land should be delivered to the applicants on their paying the amount which the defendant had paid for Kamakshamma's title. The applicants complied with the above condition. No patta had been issued in the name of the defendant.

The District Munsif held that the plaintiff was entitled to a half share of the land in question and passed a decree accordingly. On appeal, the District Judge confirmed this decree, observing :—

“ The plaintiff and Raghavacharu should have got the land if it had been disposed of under the darkhast rules as prior darkhast-dars and as occupants of adjacent lands. They were entitled to the first refusal, which the Collector would undoubtedly have allowed them and avoided interference of the Board with his order if the whole case had been fairly laid before him in time. If it was thought that the darkhast rules need not be followed when lands governed by them are to be given in exchange of lands taken up as in this case, it would have the effect of

“defeating *bonâ fide* claimants under the rules. The Collector’s  
 “order permitting exchange was not final and it was not an act  
 “done by him under a statute, which alone would vest in the  
 “assignee an undefeasible title such as cannot be upset except by  
 “a law suit. The order was appealable and reversible by the  
 “Board, who have, in the exercise of their power, modified the  
 “order and awarded the land to the plaintiff and Raghavacharlu.  
 “The patta is not yet issued to the defendant’s name, and, conse-  
 “quently, no title had been created in his favor. The Land  
 “Acquisition Act X of 1870 does not provide for assignment of  
 “waste land for money compensation awarded, and, consequently,  
 “assignment of waste land cannot be under the Act. What was  
 “the Collector’s power? He had power to dispose of assessed  
 “waste land under the darkhast rules, and he would be justified  
 “in granting such lands consistently with the rules. His orders  
 “are appealable to the Board of Revenue, who have power to  
 “cancel or modify the order.”

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The defendant preferred this second appeal.

*Bhashyam Ayyangar* for appellant.

*Parthasarudhi Ayyangar* and *Subramanya Ayyar* for respondents.

MUTTUSAMI AYYAR, J.—The question for decision in this second appeal is whether, upon the facts found, the appellant is entitled, as purchaser, to the lands sued for. Land survey No. 654 in the village of Viragalla, Nellore taluk, belonged to a Hindu lady named Kanakshamma. In December 1884, it was taken up for public purposes by the Government under Act X of 1870, and in January 1885 compensation was awarded to her, the amount being fixed with her consent at Rs. 237 plus 15 per cent. thereon. In February 1885, the appellant purchased Kamakshamma’s interest in the land for Rs. 300 and applied to the Deputy Collector for the land sued for being given to him in lieu of compensation in money. In October 1885, the Deputy Collector granted, with the Collector’s permission, the appellant’s application, and took from him a deed of exchange. The land in dispute was then Government waste. The respondent and another had previously applied for it under the darkhast rules and their application had been rejected on the ground that the land had been reserved as tank-bed. In October 1885, they protested against its grant to the appellant and contended that, as prior

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darkhastdars and occupants of adjacent lands, they had a preferential claim under the darkhast rules. The Collector, however, overruled their objection, and directed, on the 30th October 1885, that the land be placed in the appellant's possession. The respondents appealed to the Board of Revenue, who ordered, on the 3rd April 1886, that the land in dispute be made over to the prior darkhastdars on their paying, within one week from that date, the purchase money which the appellants had paid to Kamakshamma. But the appellant refused to receive the purchase money and give up the land. On the matter being reported to the Board of Revenue, the Board directed the Collector to receive the money and place it in deposit for payment to the appellant when he might desire to take it and to put the prior darkhastdars in possession. When this order was carried out, the appellant brought a possessory suit (original suit No. 249 of 1887) on account of his dispossession and obtained a decree for possession being restored to him. Thereupon the respondent brought this suit to establish his title to the land and to recover it from the appellant. Both the Courts below upheld the respondent's claim to a moiety of the land. Hence this second appeal. I am of opinion that the decision of the Courts below is correct. Neither the appellant nor his vendor Kamakshamma had a right to insist upon a grant of land in exchange for the one taken up by the Government under Act X of 1870. That enactment only contemplates an award of compensation in money and lends no support to the appellant's claim. It is not denied that respondent was prior darkhastdar and occupied adjacent lands; consequently, the appellant's claim cannot likewise be supported under the darkhast rules which recognise the respondent's preferential claim and allow an appeal to the Board of Revenue. Assuming that the Collector granted the land as stated in exhibit D under the impression that he was at liberty to do so with reference to the spirit of paragraph 2 of G.O. No. 66, I find no warrant in it for his declining to recognise any preferential claim which third parties may have under the darkhast rules, and I cannot therefore say that the Board of Revenue was precluded from holding that he ought not to have refused to recognise such claim. As regards the contention that the land in question was the property of Government and after the Collector gave it under a special contract, in exchange for some land taken up for the Government, it was not competent to

the Board of Revenue to entertain an appeal and to rescind the contract, it is not in my judgment tenable. As already observed, the contract was not one made under Act X of 1870. Nor was the Collector authorized by the Government Order cited either to disregard preferential claims under darkhast rules or to act otherwise than subject to the supervision and the authority of the Board of Revenue. I may here refer to section 44, Regulation II of 1803, which provides that Collectors shall not, in any case, authorize the alienation of land without authority from the Board of Revenue. The conclusion I come to is that the order of the Board is not at variance with any rule of law. On this ground I would dismiss this appeal with costs.

SHEPHARD, J.—I am of the same opinion. The appellant's case depends on the validity of the Collector's proceedings with regard to the land in dispute. The Collector's action was overruled by the Board of Revenue in an order passed on the 5th June 1866 in favor of the present plaintiff and his fellow petitioner; and, unless the Collector was competent to give the appellant a good title, independently of the darkhast rules and the control of the Board of Revenue, it is clear that the appeal must fail. The Regulation II of 1803, to which reference was made in the argument, distinctly negatives any independent authority in the Collector to alienate public lands and the circumstances that the land was granted in lieu of compensation for other land taken up under Act X of 1870 does not make the darkhast rules any the less applicable. I would dismiss the appeal with costs.

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