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MOTIRÁM BHÁGUBHÁI v. THE GORDON MILLS, LD., IN LIQUIDATION.

and technicalities which are not made imperative by the plain words of the Act"[1].

We, therefore, hold the notice in question to be a good notice, and allow this appeal.

Appeal allowed.

Attorneys for the petitioner:—Messrs. *Jefferson, Bhádishankar, and Dinshaw.*

Attorneys for the liquidators:—Messrs. *Craigie, Lynch, and Owen.*

(1) *Per* West, J., I. L. R., 7 Bom., at p. 508.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Nánábhái Haridás.

1888. *March* 15.

THE COLLECTOR OF RATNA'GIRI, (ORIGINAL DEFENDANT), APPELLANT, *v.* ANTA'JI LAKSHMAN, (ORIGINAL PLAINTIFF), RESPONDENT.*

Khot—Proprietary right of khot to khoti vatani land—Right of such khot to forest land and to timber and wood growing therein—Government, right of, to appropriate to forest preserves assessed or unassessed land—Construction of such khoti grants.

The plaintiff sued the defendant, alleging that the village of mauze Ambedu, in the Ratnágiri District, was his *khoti vatani* village in which his proprietary right extended to raise crop of any kind or to preserve and cut the jungle and forest trees on the lands therein. He complained that since 1855-56 the Collector of the district prohibited him from exercising the above alleged rights, and prayed that the obstruction might be removed and Rs. 600 awarded as damages. The plaintiff based his claim mainly on the settlement of 1788, Dunlop's proclamation of 1824, and several other *khoti* grants in the district. The defendant denied that the plaintiff had any proprietary right in the village, and contended *(inter alia)* that the *khot* derived his rights from the yearly *kabuláyats* passed by him, that his right to cultivate did not extend to cultivating the jungle land, and that his position was no better than that of a *patel.*

The Joint Judge who tried the suit held that under the settlement of 1788 the plaintiff, as *khot*, was entitled to the jungle produce, except timber; that in virtue of Dunlop's proclamation of 1824 the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it, and that the defendant had no right to appropriate assessed or unassessed land for forest purposes, and awarded the plaintiff the sum of Rs. 600 as damages. On appeal by the defendant to the High Court,

Held, that the application of the general rules of construction of grants to a subject by the State requires that language of such general import as is ordinarily to be found in the *khot's sanads*, should be taken most beneficially to the State.

* Appeal, No. 21 of 1868.

Held, accordingly, that, in the absence of a *sanad* expressly granting it, the ownership neither of the soil nor of cultivated or uncultivated lands passes by the grant of the *vatandári khotship*.

Held, also, that the grant of the *vatani khoti* did not make the *khot* a perpetual tenant of Government in respect of all lands in the village, except *dhárá* lands.

Held, on the authority of *Tájubái's Case*(1) and *Rámchandra N. Mahájan* v. *The Collector of Ratnágiri*(2), that a permanent relationship was created between the Government and the *khot* which could not be interfered with as long as the settlement of 1788 was in force, except with the *khot's* consent, and, therefore, that in 1855, when the *pahání* of 1788 was in force, the Government could not withdraw the *thikán* in question from the plaintiff's cultivation.

Held, also, that, in the absence of evidence to show that the right to the jungle produce was intended to be reserved to Government, the plaintiff was entitled to cut down brushwood whether as a source of revenue or for the purpose of bringing the land into cultivation.

Held that the respondent was entitled to damages for the years during which he had been excluded, and to an injunction restraining the defendant from excluding him in the future.

Held, also, that, as *khot*, the respondent had no right to cut timber in forest and uncultivated lands whether by virtue of his *khotship* or Dunlop's proclamation(3).

THIS was an appeal from the decision of Baron de H. Larpent, Joint Judge of Ratnágiri.

The facts of the case are fully stated in the judgment of the Court.

Shántárám Náráyan for the appellant:—A mere *vatandár khot* is not a proprietor of the soil. He is simply a revenue farmer, and resembles a *patel* in the Deccan. He is, at best, a

(1) 3 Bom. H. C. Rep., 132, A. C. J. (2) 7 Bom. H. C. Rep., A. C. J., at p. 43.

(3) The proclamation by the Government of the Hon'ble the English (East India) Company represented by J. A. Dunlop, Esquire, the Collector and Magistrate of the Southern Zilla*** :—"Whereas the Government has observed that the former Government used to take the teak, blackwood, and other good timber grown on the lands situate in the aforesaid zilla belonging to any person whatever, the people did not take the trouble of raising (such timber trees); and (whereas the Government) thinks that it would be to the advantage of all if from this day forth teak, blackwood, and any other kind of good timber (trees) were raised in the country, it is proclaimed to all the people that the Government has no intention (eye) towards the trees that may be growing on the lands of any person whatever situate beyond the frontiers (limits) of the jungles preserved by the Government *** that those who may own and may grow hereafter (such trees) may (*i.e.* have the liberty to) deal with them in any manner they like; and that no obstruction whatever will be made by the Government (to their so doing)."

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headman of the village and a Government officer like the *patel*: see Bombay Gazetteer, Poona, Vol. XVIII, Part II, pp. 313—16. Not only has a *khot* no proprietary right in the village land, but it is at the disposal of Government, who has the right to appropriate it to any use it pleases. The right to cultivate waste lands was given simply to remunerate the *khot* for the services he rendered to the Government—*Rámchandra N. Mahájan* v. *The Collector of Ratnágiri*(1). In the time of the Peshwás there were two kinds of *khots, viz.*, a *vatandár* and a non-*vatandár khot*. The one was a permanent *khot*, who was not liable to be removed at any time by a *subhedár*, as the other was. A *khot* having land under his own cultivation has not to pay assessment, which is the only privilege he has, but he cannot claim it as owner. The *sanad* relied on (Exhibit $\frac{18}{96}$ of 1700) does not grant any right in the soil, as there are not the words "waters, trees, stones, &c.", which are necessary to pass right in the soil. Under the *sanads*, on which the plaintiff relies, there was only the right to bring under cultivation the soil of the village and collect assessment. A *khot* is a collector of *sarkár dast*. The tenants are not his tenants. The tenants are to pay assessment according to the customary scale which the *khot* is to collect for Government and pay it in: see *Tájubái's Case*(2). A *khot* can give *kowls* to cultivators, but they are liable to be set aside by Government. Whatever his tenants pay him is not rent paid to him, but rent paid for Government. All these circumstances negative the assertion that he has a proprietary right in the village soil. As to *khots*, see *The Collector of Ratnágiri* v. *Vyankatráv*(3). In *Trimbak Vithal* v. *Náráyan Dhondbhat*(4) it was held that, in the absence of the words "waters, trees, &c.," in his *sanad*, no right in the soil could pass to a *khot*: see also *Moro Abáji* v. *Náráyan Dhondbhat Pitre*(5). If an *inámdár* could establish his proprietary right against a *khot*, much more so can Government if it has not given by its grant a proprietary right. If an *inámdár* has a right to deny a *khot's* right to cut forest, much more has Government, the *khot* being its mere servant.

(1) 7 Bom. H. C. Rep., at p. 45 A. C. J.
(2) 3 Bom. H. C. Rep., 132 at p. 149, A. C. J.
(3) 8 Bom. H. C. Rep., 1, A. C. J.
(4) Printed Judgments for 1881, p. 276.
(5) I. L. R., 11 Bom., 680.

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Macpherson (Acting Advocate-General) and *Jardine* (*Dáji Ábáji Khare* with them) :—The relation between the *khot* and Government precludes Government from resuming a *khot's* village land. The primary object in bringing him into the village was to reclaim and render cultivable the waste land therein : see Selections by Mr. Candy, pp. 5 and 11. As a matter of contract, therefore, it is inconsistent that Government should resume such land when he has spent his capital on improvement of the soil. In this case the land was brought under cultivation, but was left fallow when Government resumed it. As *vatandár khot* the plaintiff had a proprietary right in the soil, and had every right to resist the resumption by Government. The plaintiff, as a matter of fact, spent a good deal on the land ; and whether on the principle of an express contract or as equitable principle the land could not be resumed by Government. The *khoti vatan* was given to the plaintiff in perpetuity. Having regard to the grant and the other *sanads* of a like nature, Government has now no right to disturb the plaintiff. The words "waters, trees, &c.," are not essential to pass proprietary right. These words simply make the grant more clear. Government granted the land in perpetuity, and the plaintiff for his part bound himself to collect and pay the assessment to Government. By the grant, Government did not reserve its right to resume or to disallow cultivation or cutting of forest. A *khot* has a right to give leases of the village land, to bring it under cultivation, and exercise all rights of ownership. There have been instances of partition. The *khot* was held entitled to the land of his village—*Hyderkhán* v. *Alikhán*[1]. A fair construction of the *sanads* produced will establish that the grant to the plaintiff was out and out an absolute grant subject to payment of assessment. A *dhárekari* is an absolute owner, and *khot* can create a *dhárekari*. There are cases where Government has paid compensation to *khots* for land resumed. A *khot* has been recognized as a proprietor of the soil : see section 3, Act (Bom.) VII of 1863 ; Reg. XVII of 1827, sec. 8. He is not the same as a *patel*. The functions of both are quite different : see Captain Dowle's Rep., Vol. II, pp. 298, 236 ; Selected Cases, Sud. Diw. Adálut, 144 (ed. 1843). The grants of

(1) 9 Harring. Rep., 582.

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kowls alluded to for the appellant were grants to purchasers from *khots*. A *kabuláyát* amounts to an acknowledgment of the right of Government to revenue of the *khoti* village. Government has no right to take cultivated or uncultivated land of the plaintiff's village. *The Collector of Ratnágiri* v. *Vyankatráv*[1] does not decide what a *khot* is. The cases cited do not apply.

SARGENT, C. J.—The plaintiff in this case by his plaint, registered as a plaint in *formâ pauperis* on the 10th July, 1864, alleges that the village of mauze Ambedu Khurd, táluka Ratnágiri, in the zilla of Ratnágiri, is his *khoti vatani*, and that the whole of the proprietary right belongs to him of either raising crops of any description whatever from, or of preserving and cutting the jungle and forest trees on, the lands of the said village; and he complains that since 1855-56 the Collector of the district has prohibited him from raising crops on the *thikan "kond assorda"* mentioned below in his plaint and cutting trees on the village lands, and prays that the obstruction by the Collector be removed, and a decree be made for the payment by the defendant of Rs. 600 as damages.

The Assistant Judge, having refused an application by the defendant for further time to put in his written statement, framed the following issues on the 5th November, 1864:—

1. Whether the plaintiff has any and what title or tenure in the village Ambedu Khurd?

2. Whether such title carries with it a qualified or unqualified right to the uncultivated or forest land within the said village and to all or any timber, brushwood, and trees of all kinds growing on such lands?

3. If qualified, to what extent?

4. Whether by legal enactment, or by any local custom or usage having the force of law, defendant was justified in appropriating or setting apart, as forest preserves, the unassessed or the particular assessed land named in the plaint?

5. As to the claim for damages on account of the assessed lands so reserved.

(1) 8 Bom. H. C. Rep., 1, A. C. J.

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The Joint Judge found these issues in favour of the plaintiff.

On appeal to this Court the decree of the Joint Judge was reversed, in order that the defendant might put in a written statement, and that there might be a fresh trial. The Collector accordingly filed a written statement, and at the new trial the same issues were settled as on the first trial, with the following additional issue :—

Is the plaintiff's right barred by the *kabuláyatdár* having accepted compensation ?

The Joint Judge found that, under the settlement of A. D. 1788, plaintiff was entitled, as *khot*, to the jungle produce, except timber, and to cultivate the jungle or waste lands of the village; that, in virtue of Dunlop's proclamation in 1824, the plaintiff acquired an unqualified right to the forest land in the village and timber growing on it; that the defendant had no right to appropriate assessed or unassessed lands for forest purposes, and that there had been no acceptance of compensation by plaintiff for the *thikan* in question; and, lastly, he assessed the damage sustained by plaintiff at Rs. 600, and directed defendant to pay plaintiff that amount, and no longer to obstruct his occupation of the *thikan* in question. Against this decision the Collector filed a memo. of appeal on the 5th December, 1868, the hearing of which has been postponed by the parties till the present time.

With respect to the particular land in question which was taken up by Government for the purpose of making a forest preserve, it was treated by the Joint Judge as having been assessed by the Peshwa authorities on the occasion of the last settlement in 1788. We think this was incorrect, although in the view we take of the rights of the parties it is not material whether or no the *thikan* in question had been assessed. The Joint Judge arrived at his conclusion on the strength of Exhibit 31, which is an extract from the record of the survey in 1788. It appears, however, from the record itself, which was produced before us, that the headings of the several entries are omitted in Exhibit 31, and that the land mentioned in sheet 26, which, from the description of it, can scarcely be doubted is the land in ques-

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tion, was waste land and not included in the assessment of the village. The respondent had inspection of the book, and tacitly admitted the justice of the conclusion, that the Joint Judge had been in error in deeming the *thikan* in question to have been assessed land. On the other hand, the evidence given by the plaintiff's witnesses shows that when this suit was brought, it was *varkas* land lying on the hill side which had been cultivated in past years, according to the custom of the country, for the purpose of producing a crop of the inferior descriptions of grain, which such land is capable of doing every four or five years with very little labour expended on it. Mr. Shántárám indeed objected to this evidence being used, because it was only taken on the trial before Mr. Izon, whose decree was reversed by this Court. But the Collector's *vakil*, as appears from the *roznáma*, was present on the occasion when it was taken; it was treated as evidence on the second trial without any objection being taken by the defendant, and it was open to the Collector to have given evidence on that trial contradicting it, had he thought it of importance to do so. Mr. Shántárám admits it would be useless now to attempt to give any evidence on the subject, and does not ask to be allowed to do so. We may mention here that this description of cultivation, *i.e.* "*varkas* or the cultivation of dry grains", is stated by Mr. Wingate, in the 11th para. of his report on the survey and assessment of Ratnágiri, as being "pushed over every part of the surface of the collectorate of Ratnágiri where there is soil to raise a crop at all, even to the summit of the highest hills, the lands so cultivated being divided into the more level parts where the plough can be used and the steeper slopes admitting only of cultivation by manual labour. Further, that the best kinds bear crops for five or six successive years, and then require a fallow of nearly equal duration, the inferior kinds requiring longer fallows, and the worst only bearing two crops, it is said, in twelve years," and he concludes in the 12th para. with the remark that, "as far as he could see or learn, there was little, if any, unappropriated waste which is never cultivated to be found in the collectorate." The *thikan* in question must, therefore, we think, upon the evidence in the case, be taken to have been unassessed at the last *pahání* of 1788, but to have been

varkas land on the hill side at the time it was appropriated by Government, but which had been up to that time cultivated according to the custom of the country, as above described, with respect to such land.

The plaintiff's right to be a *vatandár khot* was not disputed before us. The questions, therefore, for consideration are, first, whether the plaintiff was entitled to cut timber and other trees growing on uncultivated or forest land as raised by the second issue, and secondly, whether the Government had the right in 1855-56 to preclude the *khot* from continuing the cultivation of the above *thikan* by appropriating it to forest purposes. The plaintiff describes himself in his plaint as the owner of the village, and it has been contended before us that the grant of the *vatani khoti* carries with it the ownership of the soil of the village. This conclusion is opposed to the repeated decisions of this Court, which are distinct in holding that, in the absence of a *sanad* expressly granting it, the ownership neither of the soil nor of cultivated or uncultivated lands passes by the grant of the *vatandári khotship*. This was laid down distinctly in *Tájubái's Case*[1], where it was held that the *khot* had only an hereditary right of farming the village. In Regular Appeal No. 15 of 1869 reported in Printed Judgments for 1875, page 325, where the question was as to the right to cut timber on forest lands, Westropp, C.J., and Kemball, J., held that the *khots* were not, as such, owners of the soil of the village in the absence of words in the *sanad* under which they claimed which could be construed to have that effect. In *Trimbak Vithal* v. *Náráyan Dhondbhat*[2], the question arose between the *khot* and a subsequently created *inámdár* of the village as to the forest land, and the Court, consisting of Westropp, C. J., and Nánábhái Haridás, J., held that the soil of the entire village, so far as the Government could pass it, passed by the words of the *inám* grant to the *inámdár*, and that as the document on which the *khots* relied contained nothing to show that the forest or trees thereon were vested in them, the *inámdárs* and their assignees were entitled to the *soil*

(1) 3 Bom. H. C. Rep., 132 at p. 149, A. C. J.
(2) Printed Judgments for 1881, p. 276.

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and trees of the forest. Lastly, in *Moro Abáji* v. *Náráyan Dhondbhat Pitre*(1), where the parties were the same as in the last case, but the question was as to culturable lands, the Court, consisting of West and Nánábhái Haridás, JJ., says "they" (*i. e.* the *khots*) "have relied on a general proprietary title as involved in their *khotship*, which was conclusively negatived by the previous judgment of this Court. They have produced some instances of *khotships* created or enjoyed with such proprietary rights. The adjunction of these in a few special instances would by no means prove that they were generally incident to a *khotship*. In the case of '*bhadigi*,' or temporary leasehold *khotship*, it seems admitted they were not so, and that is enough to show that they are not essential to the conception of *khotship*. But for the purposes of the present case a reference to the previous judgment is sufficient. That decides that, in the case of this village and as between the parties before us, the *khotship*, as such, did not comprise ownership."

Exception, however, has been taken by the respondent to the above decisions, on the ground that they are not borne out by the important documentary evidence in this case, and which, it is said (and probably with truth as to a large part of it) was not before the Courts on the previous occasions. That evidence was analysed and discussed at the hearing of this appeal with great industry and ability on both sides, but the conclusion we have arrived at, after a careful examination of it, is that the inference from the above decisions, *viz.*, that the *vatandár khotship* does not carry with it the proprietary right of Government in the soil, derives most important confirmation from the documentary evidence before us. A very important part of that evidence consists of 150 *vatandári khoti sanads* put in by the appellant, all of which, with two exceptions—*viz.*, *sanads*, Exhibits 89 and 68, granted by the British Government—come from the Peshwá's Daftar and go back far into the last century, and were relied on by both sides as throwing important light on the *khoti* tenure. The language of the Peshwá's *sanads* (with the exception perhaps of one, Exhibit $\frac{15}{170}$, in which the enjoyment, as *vatandár khot*, of

(1) I. L. R., 11 Bom., 680, at p. 686.

the "trees, palms, lands cultivable and uncultivable which exist in the village" is granted) is almost uniformly the same, and it will be sufficient, we think, to refer to Exhibits $\frac{1}{5}\frac{8}{9}$ and $\frac{1}{6}\frac{8}{2}$ to show what was understood by the Native authorities by the grant of the *vatani khoti*. The former *sanad* recites that the grantee had been carrying on the *khoti* as a *badhekari*, and had asked that the *khoti* might be conferred on him as "an hereditary estate and office", as that would give him encouragement to spend the necessary money and bestow the necessary labour upon the land, whether rice land or *varkas* land, as existing from ancient times and also upon such additional land which might be useful for cultivation, and thus by bringing lands under cultivation and by bringing in tenants he would make the village flourishing, and it concludes thus:—"Having considered and enquired into the matter and having found that there was no *vatandár khot* and that the business was done by *badhekaris*, and as we think that by conferring the village upon you the lands would be cultivated and brought into a state of perfection, we, having regard to the cultivation and prosperity of the village, have conferred on you the *khoti vatan* of the aforesaid village. Therefore do you, your sons, grandsons and other descendants enjoy the *vatani khoti* of the village together with *mánpáns*, and cultivate and bring the village into a state of perfection and collect the Government assessment according to the practice prevailing in the country." Again in Exhibit $\frac{1}{6}\frac{8}{3}$, after reciting that the grantees had represented "that the village had been lying desolate, that *badhekari khots* were carrying on the *khoti*, but that the village was not properly cultivated and populated, and that in consequence they had been asked to carry on the *khoti*, that thereupon they had populated and cultivated the village, that if a *vatanpatra* were granted them they would be encouraged to bring the village into a flourishing condition and recover the Government revenue," it proceeds thus:—"Thereupon after finding that there was no *vatandár khot* and what they said was true, the *khoti vatan* has been granted to you. You are to cultivate the village, recover the Government revenue, and carry on the management of the *khoti* as a *vatan* from generation to generation." In Exhibit $\frac{1}{7}\frac{8}{0}$, much relied on by the respondent, the words are "do you

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also as *vatani khot* enjoy the trees and palms, the *malkhandi* land, rice fields, cultivable and uncultivable lands which exist in the village, and having regard to the cultivation and prosperity of the village lands do you collect the Government assessment according to the custom of the country."

The language of these *sanads*, which is a fair sample of the contents of the large body of *vatani sanads* put in evidence, shows that the grant of the *vatani khoti* did not change the character of the *khoti*, but created a permanent tenure of the *khoti* in lieu of the temporary and precarious holding of the *badhekari khot*, and, further, that in both cases the *khotship* consisted in promoting the cultivation of the village lands and collecting the Government revenue. No words, however, are to be found in them showing an intention to pass the proprietorship of Government in the soil; and had such been the intention we should, as stated by the Court in the Printed Judgments for 1875, p. 331, have expected to find such words as "waters, trees, stones and quarries, mines and hidden treasures" which are frequently found in grants in *inám*, and which in *Rávji Náráyan* v. *Dádáji*[1] were held to pass the proprietary right and ownership of Government in the soil of the villages. In Exhibit $\frac{18}{110}$ it is true the trees and lands are expressly mentioned, but it is only the enjoyment of them as *vatandár khot* which is granted. It was said indeed for the respondent that the above words were merely formal, and their omission of no significance. The documentary evidence relied on (*viz.*, Exhibit $\frac{18}{143}$ taken in connexion with Exhibit 90 and Exhibit $\frac{18}{144}$ read in connexion with Exhibit $\frac{18}{32}$) does not, in our opinion, in any way support this view, but even if it were otherwise it is quite sufficient, in our opinion, to say that the application of the general rule of construction of grants to a subject by the State requires that language of such general import as is alone to be found in these *sanads* should be taken most beneficially to the State, and, therefore, construed so as to exclude the intention of passing the proprietorship of Government in the soil. This alone renders it unnecessary to discuss in detail the evidence relied on by the Collector as to its having

(1) I. L. R., 1 Bom., 523.

been the practice of the Native Government during the 18th century (a practice would be inconsistent with the *vatani khot* being a proprietor of the soil) of granting not only entire *vatani khoti* villages in *inám* with the above words importing the conveyance of the ownership of the soil, but also specific portions of *khoti* villages described by metes and bounds. We may, however, say that Exhibits $\frac{18}{189}$, $\frac{18}{178}$, $\frac{18}{159}$ and $\frac{18}{149}$ are, in our opinion, satisfactorily proved to be cases of the first description, and Exhibits $\frac{18}{207}$, $\frac{18}{549}$, $\frac{18}{536}$ and $\frac{18}{537}$ of the latter.

But although, in our opinion, it must be taken as conclusively established, both by authority and by the evidence produced in the present case, that the proprietorship of Government in the soil of the village does not, in the absence of a *sanad* expressly conferring it, vest in the *khot* by his appointment as *vatandár khot*, the question still remains as to what is the precise nature of the rights which the *vatandár khot* acquires by virtue of the grant in perpetuity of the right of cultivation of the village lands which is expressly made incidental to the *vatani khotship* of the village. And here both parties have taken up a position far higher than can, in our opinion, be justified either on historical grounds or the documentary evidence in the case. It was, on the one hand, contended by Mr. Shántárám, for the Collector, that the *khot* was merely an officer or agent of the Government, whose duty it was to develop the cultivation of the village lands and that his position with respect to Government differed in no respect from that of the hereditary *patel* of the Deccan, except in the circumstance that the Government settled annually with the *patel* the amount of revenue to be collected and with the *khot* at intervals of five or ten years, but it is to be remarked that this view is entirely opposed to that taken by the several officers of Government who reported on the nature of the *khoti* tenure in the early years after the introduction of the British rule into the Konkan. The reports of Mr. Pelly in 1819, Mr. Chaplin in 1821, Mr. Dunlop in 1824, Lieutenant Dowell in 1829, Captain Wingate in 1851, Mr. Turquand's Letters to Revenue Commissioner in 1856, for which reference may be found at pages 9, 11, 16 of Mr. Candy's Selections, show that they all concur in

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describing the *vatandár khot* as an "hereditary farmer of the revenue,"—a character which has indeed been uniformly conceded to him by Government whenever his rights have been in issue, and was found to be his correct description in *Tájubái's Case*[1]. The history of the Deccan *patels*, for which it is sufficient to refer to the Bombay Gazetteer, Vol. XVIII, p. 318, shows, on the contrary, that the *patels* were only hereditary officers, who were compensated by perquisites and freehold lands allotted to them as wages, except during the short period between 1796 and 1819, when the village revenues were farmed by the *patels*, who then settled with the Government for a lump sum,—a system, however, which was abolished by the British Government on the advice of Captain Pottinger at the latter date. Lastly, the difference of treatment of the two classes by the British Government when the Deccan and Konkan were annexed, more especially as regards the introduction of the *rayatwari* system which was caried into operation in the Deccan in 1818, can scarcely leave a doubt that the British Government found, on enquiry, that the *khots* of Konkan did occupy, both historically and in fact, a different position from the *patels* of the Deccan,—a difference which indeed may well be accounted for by the poorness of the soil in the Konkan generally and especially in the Ratnágiri District, where the *khoti* villages abound, and which necessitated the introduction of capital for the development of the cultivation and prosperity of the villages.

On the other hand, it was contended for the respondent, that the *vatani khot's* right by virtue of his appointment as such consisted in the exclusive right of cultivation of the entire village lands, or, as it was sometimes expressed, that the *vatandár khot* became the perpetual tenant of Government in respect of all the lands in the village except *dhárá* lands. There are, however, no clear and distinct words to that effect to be found in any of the *sanads* which could, with due regard to the rule of construction of grants by the State already mentioned, admit of such an intention, so opposed to the best interests of the State, being inferred on the part of Government; and if cor-

(1) 3 Bom. H. C. Rep., 132, A. C. J.

roboration were required that such was not the intention, it is to be found in the long-established usage, both of the Native and British Governments, of granting *kowls* to individuals other than *khots* (as shown by the large body of evidence in the case) under which they were put into possession of portions of the uncultivated village lands on favourable terms as to payment of rent without the intervention or consent of the *khot* so far as appears on the face of the *kowls*, which in some cases are addressed to the *khot* himself in mandatory terms. However, the nature of the *khot's* right of cultivation as established by custom has been the subject of judicial decision. In *Tájubái's Case* [1], where the *khot's* rights underwent the fullest enquiry and consideration in the lower Courts, it was found as one of the material facts with regard to the well-established custom of *khoti* tenure, that "as the *khot* settles with Government for assessment of the village as a whole or for his share in it, it follows that he may let out for cultivation, or himself cultivate, without making any additional payment to Government on that account, any waste or uncultivated land of the village;" and in delivering judgment the majority of the Court in *Tájubái's Case* say "the right to cultivate such waste or other lands as might be at the *khot's* disposal, or to give them out in cultivation on such terms as might be most to his advantage, must be regarded as the recognised mode of remuneration for services rendered." This statement of the *khot's* position is referred to with approval by Couch, C. J., and Melvill, J., in *Rámchandra Mahájan* v. *The Collector of Ratnágiri* [2]. At the same time it was held in both those cases that the *khot's* right of cultivation and privileges, as stated above, were dependent on his fulfilment of the functions of the *khotship*. Subject, however, to the above condition, the custom of the tenure as so found confers on the *khot*, whilst the settlement exists, the right of cultivating the lands of the village and making the most of them. In other words, a permanent relationship is created between Government and the *khot* which cannot be interfered with as long as the settlement remains in force, except with the *khot's* consent, and, therefore, applying this ruling to the present case

(1) 3 Bom. H. C. Rep. 132, at pp. 149, 151, A. C. J.

(2) 7 Bom. H. C. Rep., 41 at p. 45.

1888.

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(whether the land in question was assessed or not) in 1855 when the *paháni* of 1788 was still in force, the Government could not withdraw the *thikan* in question from his cultivation. It was doubtless contended by the Collector, that the *khot* derived his rights from the yearly *kabuláyat* which he was in the habit of passing under the British *ráj*; but we entirely agree with the Court below, that the *kabuláyats* passed by the Ratnágiri *khots* can only be regarded as "formal agreements by which the *khot* engages to make good the fixed sum at which the revenue is assessed, coupled with two securities for the punctual payment of the revenue."

It was urged, however, for the appellant, that the *khot's* right of cultivation did not extend to cultivating the jungle on the land in question. But no attempt was made before us to dispute the conclusion of the Court below, that the plaintiff had uninterruptedly enjoyed the jungle produce and brushwood growing on it and the right to cultivate it, and indeed we agree with the remark of Mr. Izon, who tried this case on the first occasion, that, in the absence of evidence to show that the right to the jungle produce was intended to be reserved to Government, it is to be presumed that a person having the hereditary *khotship* of the village with the right cultivation is entitled (although not perhaps exclusively) to cut down jungle, *i.e.*, brushwood, whether as a source of revenue or for the purpose of bringing the land into cultivation. In this view, therefore, of the *khot's* rights the respondent would necessarily be entitled to damages for the years during which he had been excluded from the enjoyment of the *thikan* in question as assessed by the Court below, and for an injunction restraining the Collector from excluding him in the future, at any rate during the continuance of the *paháni* of 1788. Whether on the occasion of a new settlement the Government could withdraw the land from cultivation, was not before the Joint Judge; and it is plain from the ground of decision adopted by the Joint Judge, which rested entirely on the fact of the *thikan* having been assessed in 1788, that the injunction granted by him was not intended to prejudice any such question. On this appeal, as indeed could not be otherwise, the question has not been argued, although the

discussion which the general nature of the *khoti* tenure underwent may have an important bearing on it when it arises. We are, therefore, not called upon to express any opinion on the particular question, and it would be highly inconvenient to do so. As to the respondent's right to cut timber on the forest and uncultivated land raised by the second issue, the case in the printed judgments for 1875, page 325, is a distinct authority, at any rate as to forest land, that, in the absence of a *sanad* expressly granting the right to cut timber and the proprietorship in the soil of the village, the *khot* cannot assert such right as *khot* or under Dunlop's proclamation. In *The Collector of Ratnágiri* v. *Raghunáthráv* [1], Melvill, J., considered that the ruling in the last case amounted to a decision that a *khot* has no right to cut timber, either as a *khot*, or by virtue of Mr. Dunlop's proclamation on land held by him as a *khot*, unless he could prove the grant of a proprietary title in the land of the village, and applied it to timber growing on "land held by him either as *khot*, or as tenant under the *khoti* co-parceners." It may be a question whether this did not carry the ruling beyond what was the intention of the Court, as Westropp, C. J., distinctly refrained in his judgment from expressing any opinion upon the general rights of *khots*, and what is even more important, referred without disapproval to his decision in *The Collector of Ratnágiri* v. *Vyankatráv Nárávan Surve* [2], in which, whilst reserving his opinion as to ordinary *khoti* lands, he held that at any rate as regards *khasgi* or *khoti nisbat* lands the *khot* had a proprietary right which would entitle him to the benefit of Dunlop's proclamation; but however that may be, the conclusions arrived at in this judgment render it impossible to hold that the *khot* has any right of proprietorship in uncultivated land which could fall within the contemplation of Dunlop's proclamation.

We must, therefore, confirm the decree, except so far as it declares that the respondent is entitled to cut the timber on the uncultivated and forest land, and declare that the respondent is not so entitled. Parties to pay their own costs throughout.

(1) Printed Judgments for 1875, p. 324.

(2) 8 Bom. H. C. Rep. 1, at p. 4, A. C. J.