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riciously or arbitrarily, or not in accordance with the rules of reason or justice; or that he came to his decision without any proper legal material to support it, or that his discretion was not exercised within the limit to which an honest man, competent to the discharge of his office, ought to confine himself, or that there was in fact no real judgment exercised in the matter. It seems to us that he had ample material before him to find as he did, and that he has exercised a judicial discretion and a real judgment in this matter. We must, therefore, confirm the decree of the lower appellate Court with costs.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1899. *January* 9.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (PLAINTIFF), APPELLANT, *v.* SITARAM SHIVRAM AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Trees—Right to cut trees—Khoti khasgi land in the Ratnágiri District—Dunlop's proclamation—Construction—Crown grant—Right to rescind.

Defendants were *khots* of the village of Ojharkhol in the Ratnágiri District, of which a certain plot (Survey No. 22) was their *khoti khasgi* land. In 1894 they cut down a large number of teak trees growing on this land. Thereupon the Secretary of State for India in Council sued to recover their value, alleging that they were the property of Government.

Defendants pleaded that they were the absolute owners of the trees, and relied in support of their title on a proclamation issued by Government in 1824, known as Mr. Dunlop's proclamation. This proclamation had been subsequently rescinded by Government in 1851. The material part of Mr. Dunlop's proclamation was in the following terms:—

"Upon the teak and other trees that may be on any person's land, Government has no design. He whose trees may now exist, or he whose trees may hereafter grow, may make such use of them as he pleases. Government will not offer the slightest obstruction."

Held, that this proclamation was not a mere promise, but an actual grant or gift of the teak trees to the persons on whose lands they were then actually growing, or might thereafter grow, and that the gift could not be revoked.

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Held, also, that by reason of this proclamation Government had no right to the teak trees growing on the land in question.

APPEAL from M. P. Khareghat, Acting District Judge of Ratnágiri.

In this case the Secretary of State for India in Council sued to recover the value of about seventy teak trees standing in Survey No. 52 in the village of Ojharkhol cut down by defendants in December, 1894, without the permission of Government. The plaintiff alleged that Government was the owner of the trees.

Defendants pleaded that they were *khots* of the village; that the land in which the trees were grown was their *khoti khasgi* land; that they were the absolute owners of the trees under a proclamation issued by Government in 1824, commonly known as Dunlop's proclamation, and that they had a right to deal with the trees as they liked.

Mr. Dunlop's proclamation was to the following effect:—

"Whereas the Government has observed that as the former Government used to take the teak, blackwood and other good timber grown on the lands situate in the aforesaid zilla (Ratnágiri) 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 of the jungles preserved by Government . . . . . that those who may own and may grow hereafter (such trees), may deal with them in any manner they like; and that no obstruction whatever will be made by Government (to their so doing)."

This proclamation was rescinded by a subsequent proclamation in 1851.

The District Judge was of opinion that the right to the trees, having been surrendered by Government under Mr. Dunlop's proclamation, could not be resumed except under an Act of the Legislature. He, therefore, dismissed the suit.

Against this decision the plaintiff appealed to the High Court.

Lang, Advocate General (with him Ráo Bahádur *Vasudev J. Kirtikar*, Government Pleader), for appellant.

Daji Abaji Khare (with *M. R. Bodas*) for respondents.

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The following authorities were referred to in argument:—*The Collector of Ratnagiri* v. *Vyankatrav*[1]; *The Collector of Ratnagiri* v. *Antaji*[2]; *In re Antaji Keshav Tambe*[3]; *The Collector of Ratnagiri* v. *Raghunathrav*[4]; *Nagardas* v. *The Conservator of Forests*[5].

PARSONS, J.:—The point that arises for our decision in this appeal is whether the defendants are the owners of the teak trees in Survey No. 52. The defendants are the khots of the village of Ojharkhol, and Survey No. 52 is admittedly their khasgi land, that is to say, it is for all practical purposes their own property and would remain theirs so long as they paid the Government assessment upon it even if the khotship were resumed by Government. It is also admitted that the proclamation of Government commonly known as Dunlop's proclamation applied to the lands of the village of Ojharkhol.

It was, however, argued by the learned Advocate General on behalf of the plaintiff, (1) that the effect of the proclamation was not to give the trees to the owner of the lands it referred to, but was merely a declaration of the intention of Government amounting to a promise which could be revoked at any time unless the owner could show that he had changed his position on the strength of the promise; and (2) that whatever was promised under the proclamation was revoked in 1851.

There is no doubt of the truth of the second part of the argument. Clause 4 of the proclamation of 1851 is as follows:—"The Right Hon'ble the Governor in Council is pleased to declare that the proclamation of 1823 (sic) is rescinded, and that the Government resumes, in regard to forest, all the seigniorial rights which it possessed previous to 1823." It is only necessary, therefore, to consider the first part of the argument.

Dunlop's proclamation has been before this Court on several occasions, and, therefore, it is not necessary now to quote it in full. It will be found in print in the cases of *The Collector of Ratnágiri* v. *Vyankatrav*[6], *The Collector of Ratnágiri* v. *Antaji*

(1) (1871) 8 Bom. H. C. Rep., 1 (A. C. J.)
(2) (1888) 12 Bom., 534.
(3) (1893) 18 Bom., 670.
(4) P. J. for 1875, p. 324.
(5) (1879) 4 Bom., 264.
(6) (1871) 8 Bom. H. C. Rep. 1 (A. C. J.)

Lakshman[1], and *Re Antaji Keshav Tambe*[2]. In the latter case will also be found the letter of Mr. Dunlop to Government in which he formulates his propositions. I will only quote in addition a paragraph from the letter of Government (No. 1630 of the 1st November, 1823) written in reply to that letter. It is paragraph 4 and runs as follows :—

"The Hon'ble the Governor in Council approving of the suggestions contained in the 28th paragraph authorises you to issue a proclamation surrendering all claims to teak or other valuable wood beyond the limits of the three forests of Band Toodil and Venhere in the Suverndrug Táluka and of Mhan near Málvan."

In the face of these letters and of the terms of the proclamation itself it seems clear that the argument fails. The proclamation was not a mere promise that the Government then made, but an actual grant or gift of the teak trees to the persons on whose lands they were then actually growing or might thereafter grow. The actual words of it are these: "*Jyache jagyawar sagwan wagaire jhade asatil, tyawar sarkarcha irada nahi; jyachi jhade asatil ti va pude karatil ti tyane apale khushis yeil tashi vahivat karavi; sarkarauton adthala kahi jara honar nahi;*" and I translate them thus: "Upon the teak and other trees that may be on any person's land Government has no design (*irada* may also be used to mean 'claim,' 'right' or 'title,'—see Molesworth's Dictionary). He whose trees may now exist and he whose trees may hereafter grow should make such use of them as he pleases. Government will not offer the slightest obstruction." This construction of the proclamation as a grant was evidently not disputed in the case of *The Collector of Ratnagiri* v. *Vyankatrav*[3], and although the learned Chief Justice who delivered the judgment of the Court said that the decision must be held to be limited to the particular case before him, the ruling of the Court is important since in two points it governs the present case, *viz.*, (1) in deciding that the khot is the proprietor of his khasgi land, and (2) in deciding that a gift, if made by the proclamation, could not be revoked without the consent of the donee. I purposely omit the mention made in it of khoti nisbat

(1) (1888) 12 Bom., 534. (2) (1894) 18 Bom., 671.

(3) (1871) 8 Bom. H. C. Rep., 1 (A. C. J.)

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land, for it, though used apparently in the judgment as synonymous with khoti khasgi land, is really a term of wider comprehension including that land and much other land also. In the case, however, of *Re Antaji Keshav Tambe*[1] the construction that I have placed on the proclamation was expressly affirmed. In it Telang, J., says of Dunlop's proclamation that by virtue of it "the trees then growing and thereafter to be planted on the land became the landholder's property free from any right on the part of Government," and Fulton, J., holds that "Dunlop's proclamation did grant the right to teak and other forest trees in the khasgi lands held by vatandár khots."

The decisions in which it has been held that the teak trees were not the property of the khots, are plainly distinguishable. They are all cases in which the trees stood on waste or forest lands and were claimed by the khots as khots (see *The Collector of Ratnágiri* v. *Raghunathrao*[2], *Nagardas* v. *The Conservator of Forests*[3], *The Collector of Ratnágiri* v. *Antaji Lakshman*[4]). For such a claim to be successful it has been held that it would be necessary to prove a grant of the soil to the khots. In the case of khasgi lands, however, proprietary title in them is proved by the very term itself, for they are lands which belong to the khot as having been acquired by him either by his own expenditure of money in bringing them into cultivation, or by lapse or forfeiture from those who originally owned them or by purchase. His ownership of these lands in no wise depends upon his tenure of the khotship, for, as I have before remarked, were the khotship abolished, he would continue to hold them and would then become an occupant of them as defined in the Land Revenue Code. The District Judge, therefore, was quite right in his decision, and his decree is confirmed with costs.

In Appeal No. 99 the decree is also confirmed with costs.

RANADE, J.:—In these appeals, which were heard together, the only question to be considered is whether Government, which was plaintiff in both cases, was the sole owner of the teak trees in dispute. The trees were admittedly cut by the respondent-defendants, who

(1) (1893) 18 Bom., 670.
(2) P. J., 1875, p. 324.
(3) (1879), 4 Bom., 204.
(4) (1888) 12 Bom. p. 541.

are khots of the villages in which the thikáns where the trees grew were situated. It was further admitted in the argument by the learned Advocate General, who appeared for the appellant, that these thikáns were khoti khasgis, and that the proclamation of Mr. Dunlop applied to the two villages to which the thikáns belong.

It was, however, contended that the proclamation did not make the defendant-khots owners of the teak trees, and did not deprive Government of its rights to the same. The proclamation, it was urged, was only a promise, and, until it could be shown that the promise had been acted upon, Government had a right to withdraw and cancel the proclamation, as, in fact, it did in 1851.

The question at issue is thus narrowed to the inquiry as to the nature and extent of the respondent-defendants' interest in the teak trees growing in khoti khasgi lands in villages included in the proclamation of 1823. Khoti khasgi lands have been thus defined in Mr. Justice Candy's Book on Khoti Tenure. 'All land in a khoti village, which is not dhára, must be khoti.' The khoti lands, which are cultivated by the khot himself, or by means of hired labourers, are called 'khoti khasgi,' and the rest is 'khoti nisbat,' which may be sublet to permanent tenants or to recent cultivators. This Court has in *The Collector of Ratnágiri* v. *Vyankatrav*[1] held that, in respect of trees growing in khoti khasgi or khoti nisbat lands, the khot was a proprietor, and not a mere farmer of the revenue. In that case, the dispute also related to trees cut down by the khots in the private khoti lands of a village included in the proclamation of Mr. Dunlop issued in 1823, and it was held that Government could not rescind or withdraw the grant made by it in this proclamation. Though the ruling in *Re Antaji Keshav Tambe*[2] was made in a criminal case, Mr. Justice Telang's judgment proceeds chiefly upon the nature of a khot's interest in khoti khasgi lands, which interest, he observes, was of a proprietary character, and entitled to the protection of the Dunlop proclamation, which made the trees then growing, and thereafter grown in private lands, the sole property of the person who grows them. The argument that the khot was not a proprietor of the soil was pressed in that case chiefly on the authority of *The Collector of Ratnágiri* v. *Raghunathrao*[3] and

(1) (1871) 8 Bom. H. C. Rep., 1(A. C. J.). (2) (1894) 18 Bom., 670.

(3) P. J. for 1875, 324.

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Nagardas v. *The Conservator of Forests*[1], but was disposed of by the observation that Westropp, C. J., distinctly refrained from expressing any opinion on the general rights of the khots, and Sir Charles Sargent preferred to follow in *The Collector of Ratnagiri* v. *Antaji Lakshman*[2] the ruling in *The Collector of Ratnagiri* v. *Vyankatrav*[3] noted above. These decisions cover the present dispute. The decision in *The Collector of Ratnagiri* v. *Antaji Lakshman* relates to the khot's alleged rights over forest land attached to the village. Forest lands were expressly excluded from the protection of the proclamation, and there is, therefore, no analogy between such forest lands and khoti khasgi lands in which the trees in dispute grow. The decisions in *Nagardas* v. *The Conservator of Forests*[4] and *Moro* v. *Narayan*[5] no doubt lay down broadly the position that the khots are not proprietors of the soil, but, as observed by Mr. Justice Telang in *Re Antaji Keshav Tambe*[6] and by Sargent, C. J., in *The Collector of Ratnágiri* v. *Antaji*[7], in regard to the ruling in *Nagardas* v. *The Conservator of Forests* (*supra*), that the decisions should not be carried beyond the point actually decided in these cases. On the whole, we feel satisfied that the District Judge was right in holding that the respondent-khots were entitled to claim a proprietary right in the trees growing in their khoti khasgi lands, and that the seigniorial rights of Government to teak trees were relinquished in 1823, and that relinquishment could not be rescinded by any subsequent proclamation of 1851 or notification of 1885.

We must, therefore, confirm the decrees and reject the appeals with costs.

Decree confirmed.

(1) (1879) 4 Bom., 264.
(2) (1888) 12 Bom., p. 549.
(3) (1871) 8 Bom. H. C.Rep., 1 (A. C. J.).
(4) (1879) 4 Bom., 264.
(5) (1887) 11 Bom., 680.
(6) (1893) 18 Bom., 670.
(7) (1888) 12 Bom., p. 541.