

I think that in the circumstances we can only conclude that they were deliberately assisting the operations of the War Council and have, therefore, been rightly convicted.

1930
EMPEROR
v.
GANGUBAI
RAMDAS
Murphy J.

Rule discharged.

B. G. R.

APPELLATE CIVIL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice,
and Mr. Justice Murphy.*

DAMODAR NARAYAN BEDARKAR AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, December 19.
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Land Revenue Code (Bom. Act V of 1879), sections 37, 63—Sale of land by Collector under section 37—Suit by adjacent owner for declaration that such disposal was contrary to section 63 and for recovery of possession from alienee, maintainability of—Limitation Act (IX of 1908), Schedule 1, Articles 14 and 120.

In 1911 the Collector sold to defendant No. 2 the land in dispute under section 37 of the Land Revenue Code, holding that it was not alluvial land but marsh land which had vested in the Government. In 1923, the plaintiffs, who owned lands adjacent to the said land, filed a suit for a declaration that the Collector's order disposing of the land was null and void, that the plaintiffs were entitled to the occupancy and for recovery of possession of the same from defendant No. 2. They contended that as the land was alluvial they were entitled to the first offer of the occupancy under section 63 of the Land Revenue Code :

Held, (1) that assuming that the land was alluvial, the plaintiffs were not entitled to the relief as to possession, as the Collector had not expressed any view under section 63 of the Land Revenue Code as to whether the land could be properly disposed of, having regard to the interest of the public revenue;

(2) that all that the plaintiffs could get was a declaration that the case fell within section 63 of the Land Revenue Code and an injunction restraining the Collector from dealing with the land in derogation of his right. Such an action would be governed by Article 120 of the Indian Limitation Act.

Surannanna v. Secretary of State for India,⁽¹⁾ approved.

Chhotubhai v. Secretary of State,⁽²⁾ doubted.

FIRST Appeal No. 271 of 1926 against the decision of E. H. P. Jolly, District Judge at Ratnagiri, in Civil Suit No. 3 of 1923.

The material facts are stated in the judgment.

*First Appeal No. 271 of 1926.

⁽¹⁾ (1900) 24 Bom. 435.

⁽²⁾ (1919) 22 Bom. L. R. 146.

1930

DAMODAR
NARAYAN
v.THE SECRETARY
OF STATE
FOR INDIA

A. G. Desai, for the appellants.

B. G. Rao, Assistant Government Pleader, for respondent No. 1.

A. A. Adarkar, for *K. S. Saitavdekar*, for respondent No. 2.

B. G. Padhye, for respondent No. 4.

BEAUMONT, C. J.:—This is an appeal from the District Judge of Ratnagiri, who dismissed the plaintiffs' action on the preliminary ground that it was barred by limitation.

The dispute arises in this way. The plaintiffs allege that the land in suit is alluvial land, and that under section 63 of the Land Revenue Code the Collector is bound, if with due regard to the interests of the public revenue he thinks the land should be disposed of, to offer the same to the occupant of the adjoining land (namely, the plaintiffs), the maximum price being three times the annual assessment. That claim was made as long ago as 1911, and in that year the Collector took the view that the land in suit was not alluvial land, that it was marsh land which vested in the Government, and on that view he disposed of the land in favour of defendant No. 2 under section 37 of the Land Revenue Code.

The learned District Judge dismissed the suit on a preliminary point as to limitation on the authority of the case of *Chhotubhai v. Secretary of State*,⁽¹⁾ that case being a decision of this Court which undoubtedly is very similar on the facts to the present case. The learned District Judge states the proposition to be derived from that case in this way. He says:—

“ If it (the Collector's order) was correct plaintiffs have no cause of action, if it was not correct it was an order which requires to be set aside in order to enable plaintiff to obtain relief. If it is an order which requires to be set

⁽¹⁾ (1919) 22 Bom. L. R. 146.

aside then Article 14 of the Indian Limitation Act applies and the present suit is barred by limitation."

I am not sure that the first part of the proposition stated by the learned Judge, viz., that if the Collector's order was correct the plaintiffs have no cause of action, is well founded. I think the proposition was justified by the case to which the learned Judge refers, but in that case the previous decisions of this Court and in particular the case of *Surannanna v. Secretary of State for India*,⁽¹⁾ were not cited. That was not a case of alluvial land, but a case in which the Collector had disposed under section 37 of land to which the plaintiff claimed to be entitled, and what the Court there decided was that any order made under section 37 of the Land Revenue Code is expressly to be subject to the rights of individuals legally subsisting, and if the plaintiff had a right in the land, any disposition made by the Collector under section 37 would not deprive the plaintiff of that right, and therefore the plaintiff could ignore the Collector's order and bring a suit in respect of the land. It seems to me that that reasoning is equally applicable to a case in which the plaintiff claims to have an interest in the immovable property under section 63 of the Land Revenue Code, and that the decision of this Court in *Chhotubhai v. Secretary of State* ⁽²⁾ was given without due regard to that earlier decision which was binding upon the Court but which was not brought to the attention of the Judges. If I have to choose between the two cases, I prefer the reasoning in *Surannanna v. Secretary of State for India*.⁽¹⁾ But assuming that case to be right, and assuming that the order passed by the Collector in 1911 under section 37 does not bind the plaintiffs and does not affect their interests under

1930

DAMODAR
NARAYAN
v.
THE SECRETARY
OF STATE
FOR INDIA

Beaumont C. J.

⁽¹⁾ (1900) 24 Bom. 435.

⁽²⁾ 1919) 22 Bom. L. R. 146.

1930

DAMODAR
NARAYAN
v.THE SECRETARY
OF STATE
FOR INDIA*Beaumont C. J.*

section 63, the question then arises as to what form of action the plaintiffs can properly bring. The Collector is not bound to allot the land to the plaintiffs under section 63 unless he is satisfied that it may with due regard to the interests of the public revenue be disposed of. Mr. Desai says that he is not troubled with that condition, because the Collector has actually made a disposition of the land under section 37, and has thereby admitted that the land may properly be disposed of. But it seems to me that it does not follow from the fact that the Collector, assuming the land to be non-alluvial, came to the conclusion that it could be properly disposed of having regard to the interests of the public revenue under section 37, i.e., at the market price, that he would have come to the same conclusion on the assumption that the land was alluvial land, and as such could only be disposed of at three times the annual assessment.

I think, the Collector has never expressed any view as to whether the land can properly be disposed of having regard to the interests of the public revenue on the assumption that it is alluvial land to which section 63 applies. Therefore, it seems to me that, assuming the land to be alluvial, still it would not be possible for the plaintiffs to get an order for the recovery of possession of the land. All they could do would be to get a declaration that the case fell within section 63, because the land was alluvial, and an injunction to restrain the Collector from dealing with the land in derogation of their rights or something of that sort. Any action which the plaintiffs could bring would, in my opinion, not be an action for the recovery of the land to which section 144 of the Indian Limitation Act applies, but would have to be some form of action to which Article 120 applies, and any such action would be barred after six years. As

this action was not commenced for more than 11 years after the Collector's order and the handing of the property to defendant No. 2, I think the plaintiff's action is necessarily barred, though I come to that conclusion on different grounds to those which appealed to the learned Judge.

1930
 DAMODAR
 NARAYAN
 ?
 THE SECRETARY
 OF STATE
 FOR INDIA
 Beaumont C. J.

In the result the appeal will be dismissed with costs.

MURPHY, J :—The facts are that in 1911—it is alleged—the Collector made a grant of about 6 acres of land to the defendants, other than defendant No. 1. The plaintiffs' case is that they are the owners of the adjacent land, and the grant being of alluvial land, should have been made to them in the terms of section 63 of the Land Revenue Code.

The plaintiffs were parties to the revenue proceedings, but no copy of the Collector's order is forthcoming from either side.

The suit was dismissed on the preliminary point of limitation and on the authority of the case of *Chhotubhai v. Secretary of State*,⁽¹⁾ as being barred by Article 14 of the Indian Limitation Act.

What the plaintiffs really require is that the Collector should be directed to cancel his own order, evict the defendants in possession, and then make a grant to them in the terms of section 63.

The decision really depends on a question of fact :—
 Whether the land was alluvial or not ?

This has not been decided, except presumably by the Collector, but it is clear that even on the assumption that it is alluvial, the Collector would still have a discretion, depending on his view of the interest of the public revenue involved in making the grant in the terms of

⁽¹⁾ (1919) 22 Bom. L. R. 146.

1930

DAMODAR
NARAYAN
v.THE SECRETARY
OF STATE
FOR INDIA

Murphy J.

section 63. Assuming that such an order could be made, it seems to me that Article 120 of the Indian Limitation Act would apply, and that the plaintiff's claim was time-barred in any case.

I agree that the appeal should be dismissed with costs.

Decree confirmed.

B. G. R.

APPEAL FROM ORIGINAL CIVIL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice,
and Mr. Justice Blackwell.*

1930
September 12.

SHIVJI POONJA KOTHARI, A FIRM (ORIGINAL PETITIONERS), APPELLANTS v.
RAMJIMAL BABULAL, A FIRM (ORIGINAL RESPONDENTS), RESPONDENTS.*

Letters Patent, clause 15—Appeal—Order refusing to set aside award—Indian Arbitration Act (IX of 1899), section 12—Extension of time for making award—Power of Court to extend time after award made—Substantive application by party praying for extension—Notice of application to other side—Bombay High Court Rules, 1930 (original side), rules 373, 377, 378.†

An order dismissing a petition to set aside an award made under the Indian Arbitration Act (IX of 1899), is a "Judgment" within the meaning of clause 15 of the Letters Patent, and is appealable.

*O. C. J. Appeal No. 3 of 1930.

†Rules 373, 377 and 378 are as follows:—

"373. Save as aforesaid all applications under the Act other than under section 19 of the Act shall be made by petition except as hereinafter otherwise provided and the person making any application shall be the petitioner, and the person served therewith the respondent. Applications under section 19 of the Act shall be made by motion or summons in the suit which the applicant seeks to have stayed. The respondents to such motion or summons or their attorneys on the record of the suit shall be served with notice thereof in the usual way.

377. Every petition or copy thereof shall specify the persons affected thereby, Persons on whom and upon whom notice has to be served as hereinafter notice to be served to be specified. provided.

378. Upon any application by petition under the Act the Judge shall direct notice thereof to be given to all persons specified in the petition as directed in Rule 377 and such other persons as may seem to him to be liable to be affected by the proceedings, requiring if necessary such persons to show cause within the time specified in the notice why the relief sought should not be granted and if no sufficient cause be shown the Judge shall pass such order as the circumstances of the case may require."