

been arrived at than that contained in *Govind Abaji Jakhadi v. Mohoniraj Vinayak Jakhadi*⁽¹⁾; and it is useless to speculate whether other circumstances are so similar to those mentioned in section 73 that the legislature ought to provide that a similar rule ought to govern the other circumstances.

I agree, therefore, that we ought to follow *Govind v. Mohoniraj* and that there is no reason why the case should be referred to a full bench.

Rule discharged.

J. G. R.

⁽¹⁾ (1901) 25 Bom. 494.

APPELLATE CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice N. J. Wadia.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (ORIGINAL DEFENDANT),
APPELLANT v. GANESH NARAYAN GADGIL (ORIGINAL PLAINTIFF), RESPONDENT.*

1937
February 25

*The Bombay Land Revenue Code (Bom. Act V of 1879), sections 65 and 66—
Occupant—Agricultural land—Trespasser using land for non-agricultural purpose—
Liability of occupant to pay fine.*

Under section 66 of the Bombay Land Revenue Code, 1879, an occupant of land assessed for agricultural purposes is liable to fine if there is any user of his land for purposes other than agriculture by a trespasser whether or not the occupant has consented to or has knowledge of such user.

SECOND APPEAL against the decision of S. M. Kaikini, District Judge, Thana, reversing the decree passed by R. G. Shirali, First Class Subordinate Judge at Thana.

Occupant's liability to pay fine.

The plaintiff was the occupant of Hissa No. 6 in Survey No. 260 of Murbad, assessed for agricultural purposes. In 1928, the Talati made a report that from a portion of this land stones were quarried. On this, the District Deputy

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Collector levied non-agricultural assessment and a fine and in all recovered Rs. 9. The plaintiff appealed to higher Revenue Authorities contending that the user of his land for quarrying was made by a trespasser without his knowledge and so he was not liable. His appeals being rejected, a suit was filed by him against Government to recover the amount of altered assessment and fine, alleging that they were unlawfully recovered.

The defendant contended, *inter alia*, that the said order was legal and proper and they did not admit that the quarrying was done without plaintiff's knowledge or permission.

The Subordinate Judge held that the order complained of by the plaintiff was valid and legal. He, therefore, dismissed the plaintiff's suit. His reasons were as follows:—

“Section 66 nowhere lays down that for the levy of the extra assessment and fine under that section it is necessary that the use for non-agricultural purposes must have been made by a tenant or other person holding under or through the occupant (though it provides that such other person may be evicted). The section merely says that “If any such land be so used etc.”. In the absence of any words expressly or impliedly restricting its scope, the above quoted words of the section are wide enough to include user by any person—even a trespasser without the knowledge or permission of the occupant. The word ‘so’ refers to and means ‘for any other purpose’ in the second paragraph of section 65; it cannot mean ‘the use by the occupant's servants . . . legal representatives’ in the first paragraph of that section. Relying on certain Government Resolutions quoted at pages 196 and 197 of Joglekar's Land Revenue Code (First Edition of 1919) it was argued for the plaintiff that even Government realise the difficulty of acting under the section where the user is made by the trespasser. But those resolutions appear to relate to cases of eviction with which this suit has nothing to do. They do not relate to the orders levying extra assessment and fine under the second part of the first paragraph of section 66—the order in suit being an order of that nature.”

On appeal, the District Judge reversed the decree and allowed the suit:

“Then we go to section 66 which lays down the penalty for using this land for non-agricultural purposes without the permission of the Collector. There also the expression used is “If any such land be so used without the permission etc.”. In this expression the word ‘so’ is also important and what it means is that the use must be by the persons mentioned in paragraph 1 of section 65. That this is its meaning is made further clear from the fact that section 66 lays down in the first paragraph

'If any such land be so used without the permission of the Collector being first obtained . . . the occupant and any tenant or other person holding under or through him, shall be liable for the penalty'. So, by specifically mentioning these persons it expects that the provision should apply to these persons alone and to none else. If it were the object of the Legislature to include any other persons like the trespasser then it would not have used these words at all in this section. That object of the Legislature would have been properly gained by simply saying 'The occupant and any other person in possession of the holding'. Instead of saying and using such a general term the Legislature has specially chosen to use a narrower expression and more so an expression like 'other person holding under or through him, i.e., the occupant'. From this it is quite clear that what it meant was that it is only the occupant, his tenant or any other person holding under or through the occupant were the persons who were expected to use this land, and who if they used it for such purposes without the Collector's permission were to incur the penalty laid down therein. That this was its meaning is made further clear from the second paragraph which lays down the responsibility of the persons for damages to the occupant."

The defendant (Secretary of State) appealed to the High Court.

B. G. Rao, Assistant Government Pleader, for the appellant.

G. B. Chitale, for the respondent.

BEAUMONT C. J. This is a second appeal from a decision of the District Judge of Thana, which raises a short point of law under the Bombay Land Revenue Code of 1879. The present respondent is the occupant of certain land assessed for agricultural purposes. A trespasser entered upon the land without the knowledge or consent of the occupant, and quarried stones from the land, that is to say, he used the land for a non-agricultural purpose; and the question is whether such user by a trespasser subjects the occupant to liability to a fine under section 66 of the Bombay Land Revenue Code.

Section 65 of the Code provides that 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 make certain improvements.

Then it provides that if any occupant wishes to use his holding or any part thereof for any other purpose, the Collector's permission shall be applied for.

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Then provision is made as to how the Collector's permission is to be given, and the last paragraph provides that when any such land is thus permitted to be used for any purpose unconnected with agriculture, it shall be lawful for the Collector to require the payment of a fine in addition to any new assessment.

Then comes section 66, which provides :—

“ If any such land [which, referring back to section 64, means ‘ any land assessed or held for the purpose of agriculture ’] be so used [which, again referring back to section 65, means ‘ used for any purpose unconnected with agriculture ’] without the permission of the Collector being first obtained, or before the expiry 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 Government, direct.”

Then there is a provision that—

“ Any tenant of 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.”

The trial Judge held that the use of the land for non-agricultural purposes by a trespasser subjected the occupant to a fine under section 66 ; but the District Judge differed from that opinion, and held that section 66 was confined to user of the land by the occupant or any of the persons referred to in the first paragraph of section 65, i.e., servants, tenants, agents or other legal representatives. The learned District Judge extracted that meaning from the words “ so used ”. But I am quite unable to agree with him that the words “ so used ” import user by any particular class of persons. The Act does not say “ so used by the persons mentioned in section 65 ”. It is no doubt true that under

section 66 the Collector has a right of eviction only against an occupant and any tenant or other person holding under or through him. The right of eviction does not apply to a trespasser. Of course a trespasser can always be evicted by the true owner, and it may be that the legislature thought it unnecessary to provide expressly for the eviction of a trespasser; but when one comes to the words imposing liability to a fine, they provide quite generally that an occupant shall be liable to fine. In my opinion the words of the section are quite clear, and an occupant is liable to fine if there is any user of his land for purposes other than agriculture, whether or not the occupant has consented to or has knowledge of such user.

Mr. Chitale has also contended that the amount of the fine is in excess of that leviable under rules 100 to 102 of the Land Revenue Rules, but that point was not taken in either of the Courts below, and if it had been, Government might have given evidence as to the circumstances which justified the imposition of the fine in question under section 102. In my opinion, therefore, we cannot allow any question to be raised as to the amount of the fine.

The appeal must be allowed with costs throughout.

N. J. WADIA J. Section 48 of the Bombay Land Revenue Code provides for the levy of altered assessment when land held for agricultural purposes is converted to a non-agricultural purpose, and the section makes no distinction between conversion of the land by the occupant or persons holding through or under him, or by trespassers without the knowledge or permission of the occupant.

Section 65 lays down the procedure to be followed by an occupant if he wishes to convert his land from an agricultural purpose to a non-agricultural purpose, and section 66 provides for the penalties to which an occupant renders

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himself liable if land is unauthorizedly converted from an agricultural to a non-agricultural purpose. The latter section provides that when agricultural land is so used, i.e., for a purpose unconnected with agriculture, without the previous permission of the Collector being obtained, the occupant is liable to pay altered assessment and fine. There is nothing in the language of the section which justifies the view which the learned District Judge has taken that the liability to altered assessment and fine is incurred by the occupant only when the conversion is by himself or by a tenant or agent of his. To put such a restriction on the words of the section would defeat one of the principal objects of section 48, since it would permit a conversion of land from agricultural to non-agricultural uses without giving Government the right to check such conversion by the levy of altered assessment and fine. Although the appeal to the District Court was against the levy of both altered assessment and fine in this case Mr. Chitale in the course of his argument conceded that Government were entitled to levy altered assessment from the occupant even though the conversion to non-agricultural purposes might have been made by a trespasser without the knowledge or consent of the occupant. The section, however, makes no distinction between the right to levy altered assessment and the right to levy fine. Both follow upon the conversion of the land from one use to another irrespective of whether the conversion has been made by the occupant or his tenants or agents or by somebody without the occupant's consent. I agree, therefore, that the view taken by the District Judge is wrong, and that the appeal must be allowed.

Appeal allowed.

J. G. R.