

A PRAHLAD K. MODI AND ORS. (DEAD) BY LRS.

v.

STATE OF GUJARAT

OCTOBER 18, 1994

B [K. RAMASWAMY AND S. C. SEN, JJ.]

Bombay Personal Inams Abolition Act, 1952 :

Sections 4, 5 and 7—Explanation—Scope and interpretation of.

C These appeals are against the judgment of the High Court Gujarat.
The land which is the subject matter of these appeals is governed by the
Bombay Personal Inams Abolition Act, 1952. On behalf of the appellant,
it was contended that Section 5 of the Act gives right to the Inamdar to
retain the land subject to the payment of land revenue. Since Section 7
D itself made in exception to the lands used for building or non-agricultural
purposes, it must be read in conjunction with section 5 and that, therefore,
the land which is being used for building purposes and also non-agricul-
tural purposes, shall be deemed to be the land which had not been vested
in the State by operation of Sections 4 and 7 of the Act. The High Court,
E it was contended, erred in its conclusion that the aforesaid land stood
vested in the State.

Dismissing the appeal, this Court

F HELD : 1. The operation of Section 7 of the Bombay Personal Inams
Abolition Act, 1952 is independent of and not subsidiary to section 5 nor
an exception to section 5. Section 5 deals only with cultivated land. [471-C]

G 2. Explanation to Section 7 makes clear the meaning of the uncultivated and stating that if the land had not been used for a continuous period of three years immediately before the appointed date, it is an uncultivated land. Past tense "uncultivated" would clearly indicate that the land which is used for agricultural purpose alone was saved and the Inamdar was allowed to retain its possession. In all other lands, the pre-existing right, title and interest of the Inamdar has been extinguished and vested in the State. The lands used for building and non-agricultural
H purpose alone were saved from the operation of Section 7. The Explanation

engrafted in Section 7 that the lands used for over three years prior to the appointed date for building or non-agricultural purposes alone are saved from the operation of section 7. In other words, the land must be actually used for building purposes or non-agricultural purpose. That land alone stood excluded from vesting. All other uncultivated land or waste land shall vest in the State and the pre-existing right, title and interest of the Inamdar stood extinguished from the appointed date. The possibility of its future use for building or non-agricultural purpose is not a relevant consideration to exclude such land from operation of section 7.

[470-H, 471-A-C]

Ambabhai Janhavibai v. State of Maharashtra, (1967) BLR 291, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2315-16 of 1978.

From the Judgment and Order dated 29.4.78 of the Gujarat High Court in F.A. Nos. 351 & 355 of 1972.

P.H. Parekh and B.N. Agrawal for the Appellants.

Yashank Adhyaryu, Anip Sachthey and C.B. Babu for the Respondent.

The following Order of the Court was delivered :

These appeals by special leave arise from the judgment of the High Court of Gujarat in F.A. Nos. 351 & 355/1972. The lands bearing survey Nos. 6 & 9 admeasuring 1 acre 5 gunthas and 1 acre 10 gunthas respectively situated in village Sahikpur Bogha, taluka city, Dist. Ahmedabad are the subject matter in these appeals. The land is governed by the Bombay Personal Inams Abolition Act, 1952 which came into force w.e.f. June 20, 1953. By operation of s.4 of the Act all personal inams shall be deemed to have been extinguished. Section 7 provides that all public roads:..... waste land and all uncultivated lands (excluding lands used for building or other non-agricultural purposes) which are situated within the limits of any inam village or inam land shall, except in so far as any rights of any person other than inamdar may be established in or over the same and except as may otherwise be provided by any law for the time being in force, vest in and shall be deemed to be, with all rights in all over the same or appertaining thereto, the property of the State Government and all rights held by an

A inamdar in such property shall be deemed to have extinguished and it shall be lawful for the Collector, subject to the general or special orders of the State Government, to dispose them of as he deems fit, subject always to the rights of a way and other rights of the public of individuals legally subsisting.

B Explanation - for the purpose of this section, land shall be deemed to be uncultivated if it has not been cultivated for a continuous period of three years immediately before the appointed date.

C It is neatly contended by Shri P.H. Parekh, learned counsel for the appellant after a thorough preparation that s.5 of the Act gives right to the Inamdar of retaining the land subject to the payment of land revenue in accordance with the provisions of the Code and the Rules made thereunder. The land is being used for building purposes and also non-agricultural purposes. Since s.7 itself made an exception to the lands used for building or non-agricultural purposes, it must be read in conjunction with D s.5 and that, therefore, 2 acres 15 gunthas of land in Survey Nos. 6 and 9 shall be deemed to be the land which had not been vested in the State by operation of ss.4 and 7 of the Act. The High Court was, therefore, not right in its conclusion that the aforesaid 2 acres 15 gunthas stood vested in the State by proper reading of the provisions of the Act. We find no force in E the contention.

It is seen that s.4 makes clear that notwithstanding anything contained in any usage, settlement, grant, sanad or order or a decree or order of a Court or any law for the time being in force, with effect from and on F the appointed date, all personal inams shall be deemed to have been extinguished. As its part, and composit scheme of the Act, s.7 expressly enumerates the properties and appurtenant lands held by the inamdar shall stand vested in the State. The pre-existing right, title and interest held by the inamdar shall be deemed to have been extinguished and the property shall belong to State though it was held by the Inamdar prior to the G appointed date. It shall be lawful to the Collector to take possession of the land subject to the right of the third party enumerated in s.7. Explanation makes clear the meaning of the uncultivated land stating that if the land had not been used for a continuous period of three years immediately before the appointed date, it is an uncultivated land. Past tense "uncultivated" would clearly indicate that the land which is used for agricultural H

purpose alone was saved and the Inamdar was allowed to retain its possession. In all other lands, the pre-existing right, title and interest of the Inamdar has been extinguished and vested in the State. The lands used for building and non-agricultural purpose alone were saved from the operation of s.7. The explanation engrafted in s. 7..... that the lands used for over three years prior to the appointed date for building or non-agricultural purposes alone are saved from the operation of s.7. In other words, the land must be actually used for building purposes or non-agricultural purpose. That land alone stood excluded from vesting. All other uncultivated land or waste land shall vest in the State and the pre-existing right, title and interest of the Inamdar stood extinguished from the appointed date. The possibility of its future use for building or non-agricultural purpose is not a relevant consideration to exclude such land from operation of s.7. The operation of s.7 is independent of and not subsidiary to s.5 nor an exception to s.5. Section 5 deals only with cultivated land. Shri P.H. Parekh sought reliance on the judgment of the Bombay High Court in *Ambabhai Janhavibai v. State of Maharashtra*, (1967) BLR 291. In view of the above construction, the Bombay High Court was not right in its conclusion that s.7 is to be read with s.5 and the lands which are capable of being used in future should be uncultivated land to which the Inamdar is entitled to the possession is clearly illegal. In that view, we find no ground warranting interference. The appeals are dismissed. No costs.

T.N.A.

Appeals dismissed.