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Das Gupta, J.

additional evidence was taken in this case in breach of the provisions of law.

There is nothing therefore that would justify us in interfering with the findings of facts on which the High Court based its decision.

The appeal is accordingly dismissed with costs.

Appeal dismissed.

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February, 13.

THE COLLECTOR OF SOUTH SATARA
& ANR.

v.

LAXMAN MAHADEV DESHPANDE & ORS.

(P. B. GAJENDRAGADKAR, K. N. WANCHOO,
M. HIDAYATULLAH, K. C. DAS GUPTA and
J. C. SHAH, JJ.)

Watan lands—Resumption by Government—Nature of the tenure of land held originally as watan land, after commutation of service—Bombay Hereditary Offices Act, 1874 (III of 1874), ss. 4, 15 (1) (2), cl. (3), 22—Loss of Watan rights in land—Grant of compensation if contemplated—Bombay Paragana and Kulkarni Watan (Abolition) Act, 1950 (Bom. LX of 1950), ss. 3, 4, 6, 9 (1) (2) (3) (4).

On abolition of his *watan*, the respondent applied to the Collector claiming compensation under s. 9 of the Bombay Paragana and Kulkarni Watan (Abolition) Act, 1950, for extinction of his right in the *watan* land, and of his "right to enjoy part of the land revenue." The Collector rejected the application and in appeal the order was affirmed by the Revenue Tribunal. The High Court in a petition under Art. 227 of the Constitution set aside the order of the Collector and directed him to assess and pay compensation to the respondent under s. 9 (1) of the Act.

Held, that the *watan* property—if any—the hereditary office, and the rights and privileges attached thereto, together

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constitute a *watan*, and a hereditary office does not lose its character merely because the service originally appertaining to the office has ceased to be demanded. Commutation of service does not in the absence of an express agreement to that effect alter the tenure of the land held as *watan*. By agreement, the State may relieve the holder of the office and his successors of the duty to perform the service for which the grant was made, but the office and the grant continue, subject to the terms of the settlement under s. 15 of the Bombay Hereditary Offices Act, 1874.

Appaji Bapuji v. Keshav Shamrav, (1890) I. L. R. 15 Bom. 13 and *Bachharam Datta Patil v. Viswanath Pundalik Patil*, [1956] S. C. R. 675, referred to.

Held, further, that after the commutation settlement, the holder being relieved of the obligation to perform service, the office of *watandar* survives in name only but the land granted as *watan* remains subject to the restrictions imposed by the Watan Act. By the regrant of the land in occupancy right, on abolition or extinction of the *watan*, the holder is not in truth prejudicially affected. Loss of *watan* rights in land, and the *watan* office is compensated by the regrant of occupancy rights in the land. Grant of compensation was contemplated under sub-s. (2) of s. 9 of the Bombay Paragana and Kulkarni Watans (Abolition) Act for abolition, extinction or modification of rights other than the rights of a *watandar*, to land or cash allowance or remission of land revenue.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 289 of 1961.

Appeal by special leave from the judgment and order dated February 6, 1959, of the Bombay High Court in Special Civil Appeal No. 2647 of 1958.

M. C. Setalvad, *C. K. Daphtary*, *Solicitor General of India*, *S. B. Jathar* and *R. H. Dhebar*, for the appellants.

S. G. Patwardhan and *A. G. Ratnaparkhi*, for respondent No. 1.

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1963. February 13. The Judgment of the Court was delivered by

SHAH J.—With special leave, the Collector of South Satara has appealed against the order of the High Court of Judicature at Bombay directing him to assess compensation payable to the respondent under s. 9 (1) of the Bombay Pargana and Kulkarni Watans (Abolition) Act, 1950.

Laxman Mahadev Deshpande—hereinafter called 'the respondent'—was the holder of *Paragana Watan* land bearing Survey Nos. 503/2 and 504/1 in *Mouza Aitwade*, Taluka Valve, District South Satara. Performance of service in respect of the *Watan* had been commuted under an arrangement made in or about 1864 under a commutation settlement popularly known as "Gordon Settlement" whereby the holder was, on agreeing to pay a fixed sum, relieved of the obligation to perform service as a Village Officer.

The Legislature of the State of Bombay enacted an Act called the Bombay Paragana and Kulkarni Watans (Abolition) Act LX of 1950, which abolished all *Paragana* and *Kulkarni Watans*. The respondent applied to the Collector of South Satara for an order under s. 9 of the Act awarding Rs. 10,479-2-8 as compensation for extinction of his right in the *watan* land, and of his "right to enjoy part of the land revenue." By his order dated April 29, 1957, the Collector rejected the application, and the order of the Collector was affirmed by the Bombay Revenue Tribunal in appeal under s. 9 (4) of the Act. But in a petition under Art. 227 of the Constitution the High Court of Bombay set aside the order of the Collector and directed that Officer to assess and pay compensation to the respondent under s. 9 (1) of the Abolition Act.

The land was granted to an ancestor of the respondent as remuneration for performance of *Paragana* service some time in the sixteenth century

by the Ruler of Satara, and that grant was confirmed by the British Government. The original grant and the confirmation *sanad* have not been produced, but it is common ground between the parties that the grant was of the soil and not merely of the royal share of revenue. In adjudging the claim made by the respondent for compensation under s. 9 of the Bombay Paragana and Kulkarni Watan (Abolition) Act it is necessary in the first instance to ascertain the true character of the rights of a *watandar* in the land granted as remuneration for performance of service and the effect of the commutation settlement, in the light of the material provisions of the Bombay Hereditary Offices Act, III of 1874, commonly known as the Watan Act. By s. 4 of the Watan Act 'Watan property' is defined as meaning—"moveable or immovable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office x x" 'Hereditary Office' is defined as meaning "every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue or with the village police, or with the settlement of boundaries, or other matters of civil administration. The expression includes such office even where the services originally appertaining to it have ceased to be demanded. The *watan* property, if any, and the hereditary office and the rights and privileges attached to them together constitute the *watan*" and the expression '*watandar*' means a person having an hereditary interest in a *watan* : it includes a person holding *watan* property acquired by him before the introduction of the British Government into the locality of the *watan*, or legally acquired subsequent to such introduction, and a person holding such property from him by inheritance. Section 15 of the Act provides for commutation of service.

By sub-s. (1) it is provided :

"The Collector may, with the consent of the

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holder of a *watan*, given in writing, relieve him and his heirs, and successors in perpetuity of their liability to perform service upon such conditions, whether consistent with the provisions of this Act or not, as may be agreed upon by the Collector and such holder."

By sub-s. (2) which was repealed by Act XVI of 1895, it was provided :

"Any settlement made for this purpose before the date of this Act coming into force by any Collector or other officer acting on behalf of Government with the holder of any *watan* shall have the same force as if made under this Act."

Clause (3) provides :

"Every settlement made or confirmed under this section shall be binding upon both the State Government and the holder of the *watan* and his heirs and successors."

It is clear that the *watan* property, if any, the hereditary office, and the rights and privileges attached thereto, together constitute a *watan* and a hereditary office does not lose its character merely because the service originally appertaining to the office has ceased to be demanded. Commutation of service does not, therefore, in the absence of an express agreement to that effect alter the tenure of the land held as *watan*. By agreement, the State, for consideration, may agree to relieve the holder of the office and his successors of the duty to perform the service for performance of which the grant was made, but the office and the grant continue, subject to the terms of the settlement under s. 15 of the Bombay Hereditary Offices Act, 1874.

In *Appaji Bapuji v. Keshav Shamrao* ⁽¹⁾, the nature of the tenure of land held originally as

(1) (1890) I.L.R. 15 Bom. 13.

watan land, after commutation of service, fell to be determined before the Bombay High Court. Sargent C. J., observed at p. 23 :

“What is termed a Gordon Settlement was an arrangement—entered into in 1864 by a Committee, of which Mr. Gordon, as Collector, was chairman, acting on behalf of Government—with the *vatandars* in the Southern Maratha Country, by which the Government relieved certain *vatandars* in perpetuity from liability to perform the services attached to their offices in consideration of a ‘judi’ or quit-rent charged upon the *watan* lands. x x x
x x x x the reports of Mr. Gordon’s Committee on the Satara and Poona Districts and their correspondence with Government can, we think, leave no doubt that the settlements made by that committee, unless it was otherwise specially provided by any particular settlement, were not intended by either party to these settlements, to convert the *watan* lands into the private property of the *vatandars* with the necessary incident of alienability, but to leave them attached to the hereditary offices, which although freed from the performance of service remained intact, as shown by the definition of hereditary office in the declaratory Act III of 1874.”

But the Commutation settlement does not confer an indefeasible title to the grantee, for the right affirmed by the settlement under s. 15.(3) of the *Watan Act* is liable to be determined by lapse, confiscation or resumption (s. 22 of the *Watan Act*). The State having created the *watan*, is entitled to put an end to the *watan* i. e. to cancel the *watan* and to resume the grant: *Bachharam Datta Patil v. Vishwanath Pundalik Patil* (1). Therefore if there be mere commutation of service, the *watan* office ordinarily

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survives without liability to perform service, and on that account the character of *watan* property still remains attached to the grant. But the State Government may abolish the office and release the property from its character as *watan* property.

It is in the light of these features of the *watan* and the property granted for remuneration of the *Watandar* that the relevant provisions of the Bombay Paragana and Kulkarni Watans (Abolition) Act, have to be considered in adjudging the right to receive compensation claimed by the respondent on abolition of his *watan*. By s. 3 of the Abolition Act, it is provided that :

“With effect from and on the appointed day, notwithstanding anything contained in any law, usage, settlement, grant, sanad or order—

- (1) all Paragana and Kulkarni watans shall be deemed to have been abolished ;
- (2) all rights to hold office and any liability to render service appertaining to the said watans are hereby extinguished ;
- (3) subject to the provisions of section 4, all *watan* land is hereby resumed and shall be deemed to be subject to the payment of land revenue under the provisions of the Code and the rules made thereunder as if it were an unalienated land :

Provided that such resumption shall not affect the validity of any alienation of such *watan* land made in accordance with the provisions of

section 5 of the Watan Act or the rights of an alienee thereof or any person claiming under or through him;

- (4) all incidents appertaining to the said watans are hereby extinguished."

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The material part of s. 4 provides that :

"A watan land resumed under the provisions of this Act shall x x x x be regranted to the holder of the watan to which it appertained, on payment of the occupancy price equal to twelve times of the amount of the full assessment of such land x x x x and the holder shall be deemed to be an occupant within the meaning of the Code in respect of such land x x x; all the provisions of the Code and rules "relating to unalienated land shall, subject to the provisions of this Act, apply to the said land:"

By s. 6 right to compensation in lieu of cash allowance or land revenue is granted. It provides :

"6. Notwithstanding anything contained in any law, usage, settlement, grznt, sanad or order,—

(1) a sum equal to seven times the amount of the cash allowance due to a holder on the appointed day of a watan in respect of which a commutation settlement has been effected, shall be paid to such holder;

(2) in the case of any land or village, in respect of which the watan property consists of the whole or a part of the land revenue of such land or village, a sum equal to ten times the

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amount of such land revenue shall be paid to
the holder x x x x x x."

Section 9 provides for assessment and payment of compensation for the abolition, extinction or modification by virtue of s. 3 of rights in property not provided for in the Act. Sub-section (1) provides :

"If any person is aggrieved by the provisions of this Act as abolishing, extinguishing or modifying any of his rights to or interest in property and if compensation for such abolition, extinguishment or modification has not been provided for in the provisions of this Act such person may apply to the Collector for compensation."

Sub-section (2) prescribes the procedure of an application for compensation and sub-s. (3) precludes the grant of compensation to any person on the ground that any watan land which was wholly or partially exempt from the payment of land revenue has been under the provisions of the Act subjected to the payment of full assessment.

It appears clear from the scheme of s. 6 that if the remuneration of the *Watan* is merely cash allowance, or part or whole of the land revenue of the land, compensation at the rate prescribed is payable to the holder on abolition of the *watan*. If the remuneration consists not of cash allowance or remission of land revenue, but of the land itself by the combined operation of ss. 3(3) and 4 the holder of the *watan* land is entitled to be regranted occupancy rights as in unalienated land. Section 9 deals with the rights of persons to receive compensation for abolition, extinguishment or modification of the right or interest in *watan* property by virtue of the provisions of the Act, in cases where no other provision is made in that behalf in the Act. There is

no serious dispute raised about this being the true position in law.

But two questions remain in controversy between the parties :

- (1) Whether the right to or interest in property of a *watandar* is abolished, extinguished or modified by the provisions of the Bombay Paragana and Kulkarni Watans (Abolition) Act; and
- (2) Whether provision for compensation for the abolition, extinguishment or modification or the right or interest in the *watan* land of the holder is made by any provision in the Act, so as to exclude the operation of s. 9(1) of the Act.

The first question presents little difficulty in its solution. Section 3 in terms provides for abolition of the *watan*, extinction of the office and modification of the right in which the land is held. The abolition, extinction and modification arise by the operation of s. 3 of the Act, and not from the exercise of the executive power of confiscation or resumption, by the State. Undoubtedly the power of resumption of a *watan* may be exercised under s. 22 of the *watan* Act and such a resumption may destroy the right of the holder both to the office and the *watan* land, and in the absence of any provision in that behalf no right to compensation may arise. But where the abolition of the *watan* is not by executive action, but by legislative decree, its consequences must be sought in the statute which effectuates that abolition.

On the second question the respondent affirms the contention which appealed to the High Court that where the grant to a *watandar* is of the soil and

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not merely of cash allowance or of remission of land revenue as remuneration for performance of the duties of his office, compensation has to be awarded under s. 9, for Act LX of 1950 makes no provision for payment of compensation to the *watandar* for abolition of his office and rights in the land held by him. The correctness of this view is challenged by the appellant. It must be remembered that the power which the State Government always possessed by the clearest implication of s. 22 of the Bombay Hereditary Offices Act, 1874, of resumption is statutorily enforced by s. 3 in respect of the *Paragana* and *Kulkarni Watan*s. The State Government having the power to abolish a *watan* office, and to resume land granted as remuneration for performance of the duties attached to the office was not obliged to compensate the *watandar* for extinction of his rights. But the Legislature has, as a matter of grace, presumably because of settlements between the holders and the Government under the Gordon Settlement, provided by s. 6 that cash compensation be awarded for loss of the right to cash allowance or remission of land revenue and has by s. 4 conferred upon the holder of the *watan* land, for loss of his right, a right to regrant of the land as occupant and free from the obligation imposed by its original tenure as *watan* land. Provision is also made by s. 9 for awarding compensation to persons whose right or interest in property is abolished, extinguished or modified by virtue of the section, and no other provision for compensation for such extinction, abolition or modification is made by the Act. The right to cash compensation under s. 9 depends upon the existence of two conditions: the abolition, extinction or modification of rights in property by virtue of the provisions of the Act; and the absence of any other provision in the Act for compensation in that behalf. If, therefore, s. 4 which provides for conferment of occupancy rights in land, be regarded as a provision for compensation for abolition, extinction or modification of the

right to hold it as *watan* land, the residuary enactment in s. 9 will not on the plain terms be attracted. By the operation of s. 3 all *Paraganas* and *Kulkarni watans* falling within the Act are abolished, the right to hold office is extinguished, and the land granted as remuneration for performance of service is resumed. The holder of the land is thereafter liable to pay land revenue, and is entitled, on payment of the occupancy price at the prescribed rate, to be regranted occupancy rights as if it is unalienated land. The right so conferred is, though not a right to cash compensation, a valuable right of occupancy in the land. By the resumption of *watan* land and regrant thereof in occupancy right, all the restrictions placed upon the holder of *watan* land are by the provisions of the Watan Act, and the terms of the grant, statutorily abolished. But the right of occupancy granted by s. 4 adequately compensates the holder for loss of the precarious interest of a *watandar*, because the land regranted after abolition of the *watan*, is held subject only to the restrictions imposed by sub-s. (2) of s. 4, and is freed from the incidents of *watan* tenure, such as restriction on alienation beyond the life-time of the holder, devolution according to the special rule of succession, and the liability to confiscation or resumption. In our judgment, compensation contemplated to be awarded, not as a matter of right but as of grace, is not merely money compensation; it includes grant of occupancy rights which compensates for the loss of office and the interest of a *watandar* in the land. By s. 4 the Legislature has granted for the loss suffered by the *watandar* on abolition of the *watan* and the rights in *watan* land, a right of occupancy in the land which may properly be regarded as compensating him for the abolition of his rights. Provision for levy of what is substantially a nominal occupancy price will not detract from that character. After the commutation settlement, the holder being relieved of the obligation to perform service, the office of *watandar* survives in name only, but the land

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granted as *watan* remains subject to the restrictions imposed by the Watan Act. By the regrant of the land in occupancy right, on abolition or extinction of the *watan*, the holder is not in truth prejudicially affected. Loss of *watan* rights in land, and the *watan* office is compensated by the regrant of occupancy rights in the land. It would, therefore, be reasonable to infer that the Legislature contemplated the grant of compensation under sub-s. (2) of s. 9 for abolition, extinction or modification of rights other than the rights of the *watandar* to land or to cash allowance or remission of land revenue.

The appeal is therefore allowed and the order passed by the High Court set aside. We are informed at the Bar that the respondent has not claimed right of occupancy in the land which was previously held by him as *watan* land be granted to him. Whether he will be entitled thereto in view of his failure to make a claim to a regrant is a matter on which we express no opinion. Having regard to the circumstances, we direct that there will be no order as to costs throughout.

Appeal allowed.