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BEGUM SURIYA RASHID & ORS.

v.

STATE OF MADHYA PRADESH

August 28, 1968

B [S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Jagir—"Naslan-bad-naslan" and "batnan-bad-batnan", meaning of—Jagir and muafi, difference between.

The ruler of Bhopal granted a jagir as also muafi lands to the plaintiff's father. The grants were expressed to be for "naslan-bad-naslan" and "batnan-bad-batnan" (descendant after descendant and generation after C generation). On death of the plaintiff's father, his heirs were allowed to continue in possession of the muafi lands and jagir under the express orders of the darbar except for a short period during which it was managed by the Ruler. A fresh grant was made in favour of the plaintiff for life. After the merger of the Bhopal State in the Indian territory, the respondent-State passed an order resuming the muafi land, and took possession. The plaintiff filed a suit for recovery of possession, which was dismissed. In appeal the High Court upheld the dismissal. During the D pendency of the appeal, the plaintiff died. In appeal by the plaintiff's heirs, this Court.

HELD : The muafi grants were not hereditary or perpetual and the appellants could not claim title as muafidars. The Arabic expressions "naslan-bad-naslan" and "batnan-bad-batnan" in a grant normally import a heritable estate. But the surrounding circumstances and the occasion of the grant may show an intention that the grant is for life only. The E evidence on the record satisfactorily established that the expressions "naslan-bad-naslan" and "batnan-bad-batnan" in a grant of jagir by the Bhopal darbar were never supposed either by the grantor or grantee to convey a hereditary estate. They were regarded as nothing more than a recognition that the claim of the heir to the renewal of the sanad would be favourably considered.

F There is a distinction between a muafi and jagir. The former is a remission of land revenue whereas the latter is an assignment of land revenue of the grantee. On the evidence it has been rightly held that in Bhopal State the expression "naslan-bad-naslan" and batnan-bad-batnan" in the muafi grant had the same meaning as in a jagir grant.

Raja Bajrang Bahadur Singh v. *Thakurain Bekhraj Kuer*, [1953] S.C.R. 232, 240, 242, referred to.

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1166 of 1965.

Appeal by special leave from the judgment and decree dated March 19, 1963 of the Madhya Pradesh High Court in First Appeal No. 238 of 1959.

H *Sarjoo Prasad* and *G. S. Sanghi*, for the appellants.

I. N. Shroff, for the respondent.

The Judgment of the Court was delivered by

Bachawat, J. General Obaidullah Khan was the second son of Nawab Sultan Jehan Begum, the Ruler of Bhopal. The Bhopal ruler granted a jagir as also muafi lands to Obaidullah Khan. The land known as kali parade in village Chhola was granted under the sanad muafi dated April 10, 1916 in exchange for another land. The land known as Ban Ganga was granted under the sanad muafi dated November 23, 1919. The jagir and the muafi grants were expressed to be for "naslan-bad-naslan" and "batnan-bad-batnan" (descendant after descendant and generation after generation). Obaidullah Khan died in 1924 leaving behind him his two sons Saiyed-ul-Zafar Khan and Rashid-uz-Zafar Khan. On his death a question arose whether his lands should be attached, but under the express orders of the Bhopal darbar his heirs were allowed to continue in possession except for 3 years during which the muafi lands and the jagir were managed by the Surfe-Khas, the department managing the personal property of the Ruler. Saiyed-ul-Zafar Khan died in 1945. An application for the grant of a fresh sanad was made as early as 1927 but no action was taken until 1946. Under orders of the Ruler a fresh sanad was issued on February 23, 1949 granting a jagir to Rashid-uz-Zafar Khan for his life time and simultaneously the grantee executed an agreement promising to abide by the terms and conditions of the grant. No decision was taken by the Bhopal darbar for the issue of a fresh sanad to the heirs of Obaidullah Khan. The Bhopal State merged in India in 1949. On May 10, 1954 the Chief Commissioner, Bhopal, passed an order resuming the muafi lands. A writ petition filed by Rashid-uz-Zafar Khan was dismissed and he was relegated to his suit. On June 30, 1956 the Government took possession of the muafi lands. In 1958 Rashid-uz-Zafar Khan filed a suit against the State of Madhya Pradesh for recovery of possession of the lands and mesne profits. The Trial Court dismissed the suit. Rashid-uz-Zafar Khan filed First Appeal No. 238 of 1959 in the High Court. During the pendency of the appeal he died and his heirs were brought on the record. Both the courts below concurrently held that the grants of the muafi lands to Obaidullah Khan did not endure beyond his life time and in the absence of fresh sanads his heirs had no right to the muafi lands. They rejected the contention that the grants were hereditary. The present appeal has been preferred by the heirs of Rashid-uz-Zafar Khan after obtaining special leave.

The main question in this appeal is whether the grants in favour of Obaidullah Khan were hereditary or were for his life only. It is well settled that the Arabic expressions "naslan-bad-naslan" and "batnan-bad-batnan" in a grant normally import a

A heritable estate. But the surrounding circumstances and the occasion of the grant may show an intention that the grant is for life only. In *Raja Bajrang Bahadur Singh* v. *Thakurain Bekhraj Kuer*(1) B. K. Mukherjea J. observed : "The learned counsel for the appellant naturally lays stress upon the words "absolute owner" (malik Kamil) and "generation after generation" (naslan-bad-naslan) used in reference to the interest which B Dhuj Singh was to take under the will. These words, it cannot be disputed, are descriptive of a heritable and alienable estate in the donee, and they connote full proprietary rights unless there is something in the context or in the surrounding circumstances which indicate that absolute rights were not intended to be conferred." The Court held that a "naslan-bad-naslan" grant under C a will on its true construction conveyed an estate for the life of the grantee. In *Gulabdas Jugjivandas* v. *Collector of Surat*(2) the Judicial Committee held that the grant of a jagir by the Raja of Satara was for the life of the grantee though the grant was expressed to be in favour of the grantee with his descendants and children. Sir Robert P. Collier observed : "a jagir must D be taken *prima facie* to be an estate only for life, although it may possibly be granted in such terms as to make it hereditary."

The evidence on the record satisfactorily establishes that the expressions "naslan-bad-naslan" and "batnan-bad-batnan" in a grant of jagir by the Bhopal darbar were never supposed either by the grantor or grantee to convey a hereditary estate. They E were regarded as nothing more than a recognition that the claim of the heir to the renewal of the sanad would be favourably considered. Exhibits D-20 to 31 show that a "naslan-bad-naslan" jagir did not automatically devolve on the heirs of the grantee on his death. The practice was to attach the jagir on the death of the jagirdar pending orders from the Ruler. Until a fresh F sanad was issued, the heirs of the original grantee had no title to the jagir. The Ruler could in his absolute discretion make or refuse to make a fresh grant. Though the jagir in favour of the plaintiff's father was expressed to be for naslan-bad-naslan the grant lapsed on his death and a fresh grant was made in favour of the plaintiff for his life. A Committee appointed by the Bhopal darbar published a history of "naslan-bad-naslan" G jagirs. The plaintiff was a member of the Committee. The history shows that the Bhopal darbar refused to recognise naslan-bad-naslan jagirs as enduring beyond the life time of the grantee. In Ex. D-3 the Private Secretary of the Ruler of Bhopal stated : "In view of the prevailing orders, such jagir was to be reduced in proportion to the distance existing in H relationship between jagirdar and Ruler, *i.e.*, first half, then one-third and after that rights of jagir abated." In his deposition the plaintiff stated : "In case of all jagirdars, on their death their

(1) [1953] S.C.R. 232, 240, 242. (2) L.R. 61.A. 54.

papers were placed before the Ruler to obtain his sanction for renewing their jagirs in favour of their successors. After the Ruler's sanction, a new sanad was issued in favour of the successor.... During his regime, His Highness the Ruler of Bhopal, was a complete sovereign in respect of the internal affairs of Bhopal State. He could refuse to grant or recognise "naslan-bad-naslan" jagir by dispossessing an heir of a jagirdar and not allowing him to continue in possession for any period." D.W. 1 Mohammad Adil, Clerk, Revenue Department, Bhopal, stated : "The progeny has a right in naslan-bad-naslan jagir and batnan-bad-batnan jagir. But in spite of that the Ruler has full right to grant or not to grant the jagir. In respect of such sanads on the death of the sanad-dar (sanad holder) an enquiry used to be made regarding his heirs. On the death of the jagirdar the jagir used to be under attachment during enquiry. If the Ruler did not wish to grant the jagir an order of forefeiture used to be passed." The plaintiff was unable to give a single instance where the devolution of naslan-bad-naslan jagir on the death of the grantee was automatic. In agreement with the courts below we hold that the expressions "naslan-bad-naslan" and "batnan-bad-batnan" in a grant of jagir by the Bhopal darbar did not connote a hereditary estate. The change of government in 1949 did not give the jagir a greater fixity of tenure than that enjoyed under the Bhopal rulers.

There is a distinction between a muafi and a jagir. The former is a remission of land revenue whereas the latter is an assignment of land revenue to the grantee. But the question is whether the expressions "naslan-bad-naslan" and "batnan-bad-batnan" in the muafi grant to the son of the Bhopal ruler had the same meaning as in a jagir grant. The courts below concurrently held that in Bhopal State the expressions "naslan-bad-naslan" and "batnan-bad-batnan" in the muafi grant had the same meaning as in a jagir grant. Having regard to the special facts and the course of trial in this case, we are not inclined to disturb this concurrent finding. In the trial court the case was fought and evidence was led on the footing that the expressions had the same meaning in both jagir and muafi grants. There is evidence to show that the muafi grant in favour of the Ruler's son was liable to be attached on the death of the grantee, and the usual procedure of attachment was not followed in this case as a matter of grace under special orders of the Bhopal darbar.

It was argued that the heirs of Obaidullah Khan were accepted as muafidars by the government. It appears that when two persons named Amzad Ali and Ikram Ahmed wanted to buy portions of the land, they obtained the permission of the Bhopal darbar and then paid the price to the plaintiff. On the acquisition of a portion of the land, compensation was allowed to be

A paid to the plaintiff and was not claimed by the government. This evidence does not establish that the plaintiff was accepted as the muafidar in respect of the lands. Admittedly, no sanad was issued to him. In agreement with the courts below we hold that the muafi grants were not hereditary or perpetual and the appellants cannot claim title as muafidars.

B Mr. Sarjoo Prasad submitted that the appellants were entitled to recover possession of the muafi lands on the basis of an alternative claim. He contended that the heirs of Obaidullah Khan, the original muafidar, having continued in possession of the muafi lands after his death, they became khatedars or tenants of the Bhopal darbar and occupants under the Bhopal State Land C Revenue Act (Act No. IV of 1932). In support of his contention he relied on Circular No. 10 of the Bhopal Government dated January 28, 1930 and on secs. 2(7), 2(15), 52(2) and 54 of the Bhopal State Land Revenue Act. He also referred us to the pleadings and issues 1, 4, and 9 and paragraphs 18, 19 and 21 of the judgment of the trial court. The judgment of D the High Court did not deal with the contention. The subsequent order of the High Court dated July 24, 1963 indicates that the point was raised at the hearing of the appeal but the High Court thought that nothing could be said against the findings in paragraph 19 of the trial court. We think that the omission of the High Court to deal with the contention was due to some misapprehension. The ends of justice require that the E matter should be remanded to the High Court so that it may decide the point.

In the result, we affirm the finding that the muafi grants were for the life of the grantee only and that the appellants cannot claim title to the suit lands as muafidars. The decree of F dismissal of First Appeal No. 238 of 1959 is set aside, and the matter is remanded to the High Court so that the High Court may deal with and decide the remaining contentions mentioned above in accordance with law. There will be no order as to costs in this Court.

G Y.P. *Appeal allowed and case remanded.*