

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kaikhusru Aderji Ghaswala and others v. The Secretary of State for India in Council, from the High Court of Judicature at Bombay; delivered the 27th June 1911.*

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PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD ROBSON.

MR. AMEER ALI.

[DELIVERED BY LORD ROBSON.]

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In form this is an Appeal from an Interlocutory Order of the High Court of Bombay, dated the 12th February 1908, which directed the re-hearing of an Appeal from a Judgment and Decree of the District Judge of Poona, dated the 22nd October 1904, in favour of the Appellants, but by an Order of His late Majesty in Council it is in effect an Appeal on the merits of the suit from a Judgment of the High Court dated the 29th July 1907.

The action was brought by the Respondent to eject the Appellants from premises known as No. 9, Arsenal Road (formerly known as 23, Staff Lines) within the limits of the Poona Cantonment.

It was claimed on behalf of the Government of Bombay that the land belonged to them and was only held by the Appellants on military or cantonment tenure, which entitled the Government to resume it at their pleasure, subject to

compensation for buildings which the tenants might have erected thereon. The Appellants, on the other hand, claimed the land as their private property, and while admitting that they were subject to military jurisdiction in the shape of properly authorised cantonment regulations, and to the Government right of appropriation, contended that they were entitled to compensation on a basis of private ownership, and not as mere licensees.

The title of the Appellants began with a document dated the 27th August 1864 whereby one I. C. V. Beyts, a Purser in the Indian Navy, certified that for the consideration therein mentioned he "handed over to Dorabjee Pestonjee, Esq., all claim he had to the house, outhouses, and premises, generally marked 23, Staff Lines, Poona Cantonment." This document is endorsed as "sanctioned" by the Brigadier-General Commanding. Its wording appears on the whole to be more consistent with the contention of the Government that the interest of the tenant was that of a licensee of the land with a right to the buildings than with the private ownership in fee alleged by the Appellants. The Appellants, however, assert that the predecessors in title of Beyts were in fact owners of the land at the time the cantonment was established, and that nothing had since happened to vest the title in the Government. In support of this they produce a map of the cantonment dated the 8th February 1828, though possibly made in 1826, in which they show a house standing on the premises they identify with No. 9, Arsenal Road. They can say nothing as to the tenure on which that land was then held, nor by whom it had been granted, and can only ask the Court to infer that the plot was one of the private properties which they say existed there before the cantonment was formed. But, if that inference

be not sustainable, then they contend that they are in actual possession of the land, and that the onus is on the Respondent of rebutting the presumption of ownership in fee attaching to the possession of land whether in a cantonment or elsewhere.

The Poona Cantonment dates from the year 1817, and was formed after the defeat of the Peishwa at the Battle of Kirkee. In exercise of the right of conquest the military authorities at that time marked off a considerable area of land, about 5 square miles (which was cultivated or capable of cultivation only to a very slight extent), for the occupation and convenience of the troops. They soon set about to frame regulations for the appropriation and control of this area. Up to 1834 the Presidency of Bombay was governed by regulations made by the Governor in Council, and the first regulations affecting this cantonment appear to be those issued in 1819. By Bombay Regulation I of 1819, Section 4, it is provided that the limits of the cantonments at which any corps or considerable detachment may be quartered shall be fixed by the Commanding Officer in concert with the Zillah Magistrate or Criminal Judge, and directing those authorities to report thereon to the Governor in Council. On the 14th September 1820 the Governor in Council directs the Commander-in-Chief to issue instructions carrying into immediate effect the provisions of Regulation I of 1819.

The precise delimitation of the Poona Cantonment was accordingly then commenced, and the correspondence during the years immediately ensuing (particularly a letter dated the 24th September 1822 from the Collector to the Commissioner) shows that the military authorities were making arrangements and agreements with the owners of the lands belonging to Poona such as would indemnify them for the loss they sustained by being deprived of their rights of occupancy. On

the 4th May 1823 the Commissioner, Mr. Chaplin, writes to the Collector to inform him that the whole of the land which had been sketched out as necessary for the cantonment by the military authorities must be given up, and asking for a report on any arrangements that might in consequence be requisite for indemnifying the present holders of the land. It seems reasonably clear, therefore, that from the first the military authorities were conscious, as they would scarcely help being, of the inconvenience and risk of having absolute owners of land within the cantonment, and of the necessity for propitiating them by proper settlements and compensation. Even if the Appellant established that his house was built at or before the time the cantonment was formed, there is still, under the circumstances of the case, a strong probability that he was duly compensated along with other proprietors for the change in his position as owner to that of licensee. This probability is rendered stronger as the history of the Cantonment proceeds.

Bombay Regulation 3 of 1826, Section 21, provides that the limits of cantonments shall be subject to the approval therein mentioned, and adds "in which limits private property is not to be included." Bombay Regulation 22 of 1827, Section 21, is to the same effect.

On the 29th September 1827 a Government proclamation was issued for the information of the Poona district, notifying that the cantonment boundaries were fixed, prohibiting cultivation within that area, and warning all persons that the produce of such cultivation would be subject to appropriation without compensation.

It is unnecessary to go in detail through the numerous succeeding regulations which show how strictly the military authorities asserted their proprietary rights. They are summarised in Aitchison's Cantonment Code of 1836, and in

Jameson's Cantonment Code of 1850, and they make it clear that, though permission to occupy ground was frequently given, especially for the building of officers' houses or bungalows, such permission carried with it no sort of proprietary right, and the buildings were liable to expropriation at a price to be fixed by the authorities. The permission of the Commanding Officer was necessary even for the sale or letting of this house thus built.

In this state of things it is impossible to say that mere possession or occupation of the bungalow on this site affords any presumption whatever that he or his predecessors in title were owners in fee. The presumption is all the other way, and that adverse presumption is strengthened when the history of the site comes to be examined. It has been traced to the year 1843, when it was occupied by an army surgeon. It afterwards came into the hands of a contractor, Nundram Sundarji, and in 1860 he is found petitioning the Commander-in-Chief against a proposal by the military authorities to remove his bungalow along with others for various reasons, which illustrated the limited and precarious character of his tenure. Again, in 1882, Adarji Dorabji applied for permission to build a fowl shed on the site, and duly obtained the sanction of the Commander-in-Chief. These circumstances tend to show that the Appellants' predecessors in title did not regard the property as differing in its tenure and terms from other property in the cantonment.

Their Lordships are of opinion that the Appellants are mere licensees, and that the land in question has been lawfully resumed by the Government, and they will therefore humbly advise His Majesty that this Appeal should be dismissed with costs.

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In the Privy Council.

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KAIKHURU ADEEJI GHASWALA  
AND OTHERS

v.

THE SECRETARY OF STATE FOR  
INDIA IN COUNCIL.

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DELIVERED BY LORD ROBSON.

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