

GOVERNMENT OF BOMBAY.

REVENUE DEPARTMENT.

Resolution No. 4748/51.

Bombay Castle, 4th August 1952.

Letter from the Collector of West Khandesh No. L.A.W.S.R. 11, dated 4th June 1952:—

"The Civil Judge, Senior Division, Dhulia, by his order No. 912/45 transferred decree No. 166 of 1942 to me for execution. The decree involved partition of agricultural lands belonging to the parties to the suit. The decree was forwarded to the District Inspector of Land Records for effecting a partition in terms of the decree. The District Inspector of Land Records got this done through his Cadastral Surveyor and submitted a report for its approval and for issue of a final order of partition. The partition effected was accepted by my predecessor and a final order was issued by him on 20th September 1947 and 31st October 1947. The plaintiff was restored with possession of the land and the papers were on 14th February 1949 endorsed to the Civil Judge for record. On 1st May 1950, the Civil Judge returned the papers stating that in response to the application made to him by the defendants under section 47, Civil Procedure Code, complaining against the procedure followed in effecting the partition, he heard the parties and he came to the conclusion that the partition was not effected in accordance with the law as contained in section 54 of the Civil Procedure Code. He conceded to the plea of the defendant that according to section 54 of the Civil Procedure Code a decree transferred for execution to the Collector under section 54 has to be executed by the Collector himself or by a Gazetted subordinate of the Collector deputed by him to execute it and that the actual partition which was effected by a Cadastral Surveyor who was not a Gazetted officer and did not hold a deputation order directly from the Collector was illegal. He, therefore, remanded the decree for a fresh execution. The Land Records Department has got a prescribed set of rules laying down the procedure in accordance with which partition decrees forwarded to the District Inspector of Land Records shall be executed. Rule 8 (A and B) lays down that the partition shall be effected by a Cadastral Surveyor deputed by the District Inspector of Land Records. Rule 10 requires the District Inspector of Land Records to check the work done by the Cadastral Surveyor and to satisfy himself that the partition was properly and equitably done and on having done this, the District Inspector of Land Records, West Khandesh, is to forward the papers to the Collector for a final order. These rules are applicable to the whole State except Ratnagiri District and the partition decrees were and are effected in accordance with the provisions of these rules only. The rules have been embodied in Chapter VI of the Manual of Standing Orders of the Land Record Department. The District Government Pleader who was consulted opined that the word 'LAW' in section 54 would include the rules also and advised a back reference to the Civil Judge. As the rules and the practice thereunder are in force over a long period and as the decision of the Civil Judge disturbed this long standing practice, the matter was referred to him for reconsideration. He declined to review his order for two reasons, viz. :—

(1) Under the law, a Court cannot review its own orders. He points out that however illegal may it be, it stands as final unless set aside by an appellate authority. No appeal was preferred by the aggrieved party against the decision and therefore the order has become final.

(2) He is of the opinion that as the law stands, the exception taken by the party to the partition work being done by the Cadastral Surveyor is correct. It is seen from the papers, that this objection was taken by the defendant when he received notice from the Cadastral Surveyor for partition, but it was not considered as valid and the partition done was accepted.

"2. No doubt the provisions of section 54, Civil Procedure Code, lay down that a partition decree shall be executed by the Collector or by the Gazetted subordinate deputed by him, still to me it appears that the objection raised to the particular procedure of actual partitioning the land by a Cadastral Surveyor does not stand to reason. What the law would require is that the important stages in the execution of a partition decree shall be attended to, by the Collector or his Gazetted officer and if this is done, it would be sufficient compliance with the law. A partition decree involves three stages (1) Actual partition, (2) Final Order and (3) Possession. The first is done in accordance with the rules 8 and 10 of the Land Record Department's Rules referred to

above. Rule 10 is important. It requires the District Inspector of Land Records to scrutinize the partition work verifying calculation work and satisfy himself that the partition was done properly and equitably. It is also pertinent to note that Land Records Department has a special method of classifying lands with reference to soil and other factors. If, therefore, work is done through a lower subordinate who is not a Gazetted officer, the further duties cast on this Gazetted officer secure full compliance with the law that the work shall be done by a Gazetted officer. Since the District Inspector of Land Records is a Gazetted officer, subordinate to the Collector, the provisions of law as to this stage are duly complied with. In the second stage, the Collector himself passes the final order. Regarding the third stage, I request a reference to Government Resolution, Revenue Department, No. 5807/39 dated 24th June 1941, in which Government with a view to comply with the requirement of the law, directed that possession in partition cases shall be delivered by a Gazetted officer and for these purpose Government have declared a Mahalkari to be a Gazetted officer for the purposes of execution of partition decrees. Thus, it will be seen that Government have reviewed these rules and the procedure and have not found that they are not counter to the provision of the law contained in the Civil Procedure Code. I therefore request you to move Government to issue orders :—

(1) Whether the objection of the Civil Judge that actual partition on the ground can not be effected by a Surveyor who is not a Gazetted officer is correct.

(2) If, in the opinion of Government, the objection raised is not correct, how opportunity should be taken to get his order set aside.

Papers in two files accompany.”

Government reference dated 18th July 1952 to the Remembrancer of Legal Affairs.

Memorandum from the Remembrancer of Legal Affairs, No. 12256, dated 25th July 1952 :—

Civil Procedure Code, sections 47 and 54.

Partition by Cadastral Surveyor.

“ It appears that a decree for partition in Special Regular Suit No. 156 of 1942 was forwarded by the Civil Judge, Senior Division, Dhulia, for execution to the Collector of Dhulia. The Collector forwarded it to the District Inspector, Land Records, for effecting a partition in terms of the decree and in accordance with the Departmental Rules, the District Inspector got the partition done through the Cadastral Surveyor and after satisfying himself that the partition proposed by the Cadastral Surveyor was proper and equitable submitted the papers to the Collector for approval. The final order of partition was passed by the Collector and the decree-holder was placed in possession. Thereafter the judgment-debtor appears to have made an application to the Court under section 47 of the Civil Procedure Code objecting to the partition on the ground that the partition effected by the Cadastral Surveyor was *ultra vires*. The Civil Judge accepted that contention and has directed the Collector to re-partition the property. The question raised for Remembrancer of Legal Affairs' consideration is whether the view taken by the Civil Judge is correct.

“ 2. Under section 54 of the Civil Procedure Code the partition of the estate or the separation of the share shall be made by the Collector or any Gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition or the separate possession of shares of such estates. It appears that certain rules have been framed by Government for the guidance of officers in respect of partition of the estates. These rules are no doubt in the nature of instructions and have no statutory force. However, what is required to be done by the Cadastral Surveyor under these rules is that he should give a notice to the parties and if the parties are present, he should partition the land (1) according to the Court's direction in the decree or (2) in the way the parties agree among themselves to have the property divided. But if the parties are absent after due notice he should partition the property equitably in accordance with the Court's instructions with the help of the *punchas*. Rule 9 provides that after completion of the measurement work, he should submit the case within a week to the District Inspector of Land Records, with the following papers :—

- (1) Plane table sheet with three copies, etc.
- (2) Hissa Form No. 4 showing Hissewar area.
- (3) Watap Takta in Form A.
- (4) All auxiliary papers such as notices, orders to Village Officers, etc.

Under rule 10 the District Inspector of Land Records will on receipt of the papers from the Cadastral Surveyor scrutinize the proposed partition, verify the calculation work submitted by the Cadastral Surveyor and if the work is found properly and equitably done, forward the case to the Collector for approval of the partition made and the Watap Takta or partition statement will then be scrutinized in the Collector's office. It is clear from these rules that what the Cadastral Surveyor actually does is to propose partition of the estate and it is for

the District Inspector to scrutinize the proposed partition and to see that the work is done properly and equitably. The Civil Judge, Senior Division, considers that the work done by the Cadastral Surveyor is in itself a partition of the estate and as such it is *ultra vires* of section 54 of the Civil Procedure Code inasmuch as he is not a Gazetted officer. This view of the Civil Judge is obviously wrong. 'A statute which requires something to be done by a person would, except in cases subject to the principle that *delegatus non potest delegare*, be complied with, in general, if the things were done by another on his behalf and by his authority, for it would be presumed that there was no intention to prevent the application of the general principle of law that *qui facit per alium facit per se* unless there was something in either the language or the object of the statute which showed that a personal act was intended.' (See Maxwell on the Interpretation of Statutes p. 66). It cannot be expected of the Collector or any Gazetted officer charged with the duty of partitioning the estate to go personally to the estate and effect partition by actual measurements. The spade work such as actual measurement and preparing Watap Hissa must obviously be got done by a subordinate officer and so long as such work is properly scrutinised and approved by the officer charged with the duty of partitioning it would be deemed to have been done by such officer. Otherwise it would be impossible to carry on the administration if such details are required to be personally attended to and discharged by the officer. In these circumstances, the view taken by the Civil Judge, Senior Division, is clearly wrong. Since, however, the parties have submitted to the decision of the Civil Judge, the proper course would be to re-partition the lands as directed by the Civil Judge, Senior Division, and in a case similar point is raised by any Court again, opportunity should be taken to contest the view by asking the District Government Pleader, Dhulia, to argue the point."

RESOLUTION.—The Remembrancer of Legal Affairs' opinion should be accepted and the Collector of West Khandesh should be requested to take action accordingly.

2. Copies of the correspondence should be forwarded to all other officers concerned for information and guidance.

By order of the Governor of Bombay,

D. S. BAKHLE,
Secretary to Government.

G. R. No. 4748/51, R. D., dated 4th August 1952.

To

The Collector of West Khandesh (with case papers),
All other Collectors,
The Settlement Commissioner and Director of Land Records,
The Legal Department.

No. BPD . of 1952.

Copy forwarded for information and guidance to

All Mamlatsdars,