

Chapter 19.

Jurisdiction over the foreshores and admiralty
Jurisdiction over Baroda Territory.

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Question Referred to Government
of India.

In connection with the claim of His Highness' Government to establish salt Works and open new ports in Baroda Territory in Gujarat, the Government of India decided in 1859 that the British Government as successors to Peshwa had an exclusive right of sovereignty over the foreshore upto high watermark in Baroda territory. This decision was concurred in by the Secretary of State in 1861. Till 1889, goods washed away on the Navsari Coast, used to be dealt with by the Court of the Baroda State, with occasional protests from British Authorities*. In that year, however, the question of jurisdiction over derelict goods was referred by the British Customs authorities to the Government of India who in 1891, decided once more, that the right of jurisdiction over derelict and other goods must be held to be vested in British Government. Thereupon, an exhaustive representation was made by His Highness' Government in 1898, in which it was conclusively shown that no such arbitrary rights as were alleged to have been exercised by the Peshwa, had ever been exercised by him over the foreshores of Baroda territory. The Government of India, after consulting the Secretary of State, communicated the following modification in their previous decision.

Secretary of State on the Issue.

"He (the Secretary of State) considers it necessary in the

*From a H.P.O. bound Volume . A note on the Subject.

present circumstances to assert, on the part of the Paramount Power, an exclusive territorial Sovereignty over any place where ship-wrecked, jettisoned or such like goods may be found on the foreshores of the sea or the tidal rivers in Baroda territory in Gujarat. The British Government must, however, in the interest of India, as a whole, continue to exercise an unquestioned authority to prevent smuggling and offences against ships, to regulate sea-traffic, to protect ports and customs revenue and to take charge of wrecks, as well as to permit or forbid the opening of ports in Baroda territory and to control salt works. No such authority, His Lordship observes, could possibly be exercised by Baroda Darbar, who possess no International Status. In pursuance of their Imperial obligations for which they may be, in some cases, responsible to foreign powers, the Government of India must reserve a complete liberty of action in order to fulfil their duties and to give practical effect to their jurisdiction, in respect of the particular matters mentioned and all those under discussion. The Government of India desire it to be clearly understood that they ~~will not~~ will not hesitate, if necessity occurs, to exercise their right to follow smuggled or stolen goods into villages on the coast, and that the officers of the Baroda State cannot be allowed to interfere with or to compete with British Officials in the discharge of these Imperial duties. In all ordinary matters which are not covered by the decision of 1861, or by that now announced, the foreshores will be regarded as subject to the jurisdiction of His Highness the Gaekwad. "**

This was one of the typical announcements of the prominent principles on which the British policy was based and brought into play to demonstrate their all round superior position when compared to that of the Indian Native State.

This decision, therefore, upset the decision of the Government of India given in 1891, on the question of Jurisdiction over derelict goods. But the claim now urged of jurisdiction over Gujarat waters, was based on new grounds,- not on that of prescription and long acquiescence urged in 1861, but on the ground of Imperial Policy and obligations.

Position different in Kathiawar.

So far with regard to the Gujarat Coast, The position of His Highness' Government with respect the Okhamandal Coast was, however altogether different. Okhamandal was ceded, as is now well-known, to the Baroda State by the British Government, by the 7th Article of the Treaty of 1817*, in perpetuity and with all the rights of the Sovereignty thereof etc. Jurisdiction of every kind must therefore, be assumed to be included in the term "with all the rights of Sovereignty."

In support of this view, the Baroda Government stated that in 1891, some correspondence took place, in an extradition case between the Assistant to the Agent to the Governor General Okhamandal, and the Political Agent in Cutch which turned ~~on~~ on the right of the Baroda State to floatsam and jetsam in the vicinity of the fort of Cutchigad which is situated in the heart of the Okha District. The

* *A.T. Vol. 6 Ed. 5 P. 356.

matter was referred to the Government of India who decided that they did not see any reason to assert on behalf of the British Government a claim to derelict goods on His Highness the Gaekwar's Okhamandal Coast.

His Highness' Appeal in 1903.

In 1903, an appeal was preferred by His Highness' Government to the Government of India in the matter of the dispute regarding ownership of the islet of Pagar on the Okhamandal Coast. In para 7 of the appeal it was stated * as follows:-

"The full Sovereignty (over Okhamandal) thus acquired included territorial jurisdiction over all the islands and reefs, small and great, lying within one marine league of the foreshore, and His Highness' Government has all along been exercising such jurisdiction."*

With reference to this, the Government of India observed that "they do not admit any right to admiralty jurisdiction on the part of the Baroda State, such as is apparently claimed in paragraph 7 of the appeal, since all such jurisdiction, unless an exception has been expressly allowed, belongs to the Paramount Power only." The Baroda Government wrote to the residency to enquire whether the above objection of the Government of India related to limited Maritime or Municipal jurisdiction over the territorial waters, or was confined to the higher, admiralty jurisdiction to try offences on high seas etc. In reply, the Durbar Government was informed that their "decision of 1903 was limited

*H.P.O. File No. 207/145 'Memorandum of Appeal to the Government of India against the decision of the communication, N.D. in the dispute regarding Pagar Kad a Islet'. P.2.

to particular islet of Pagarkhada , and that it would, in their opinion, serve no useful purpose to embark on a general discussion as to jurisdiction in territorial waters (unless some case actually arises in which that question has to be determined. The Darbar may rest assured that the Government of India have no desire on behalf of the British Government to restrict the exercise of any jurisdiction to which His Highness the Gaekwar is properly entitled. " *

Here the matter stood while the Baroda Government was considering whether it would be of any use to move again the Government of India to modify their views.