

(1972) 09 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 1217 of 1967

Anusyabai

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-09-1972

Acts Referred:

Citation : AIR 1973 Bom 125 : (1973) MhLj 56

Hon'ble Judges : Padhye, J; Masodkar, J

Bench : Division Bench

Advocate : B.B. Ranade, for the Appellant; M.M. Qazi, Asst. Govt. Pleader, for the Respondent

Judgement

Padhye, J.—The petitioner held three fields being Khasra Nos. 32/1, 7-22/3, 31/4 and 22, total area 8.25 acres of mouza Nalwadi, tahsil and district Wardha. She desired to divert her agricultural lands into non-agricultural lands and, therefore, applied to the Sub-Divisional Officer Wardha, for diversion of the said lands.

2. The Sub-Divisional Officer by his order dated 12-12-1960 granted the necessary permission for diversion. The application for diversion was presumably made u/s 156 of the Madhya Pradesh Land Revenue Code which was then in force. Along with the application, the petitioner had filed the proposed layout plan showing the plots to be laid thereunder, which plan was sent to the Town Planning Officer, Nagpur, for scrutiny and opinion. The Sub-Divisional Officer, however, did not fix the premium to be paid by the petitioner on such diversion or the re-assessment of the land on account of the diversion. He left the matter of re-assessment to the Superintendent, Land Records, Wardha. It appears that the question of fixing the premium and the fresh assessment as on non-agricultural land was taken up by the Nazul Maintenance Surveyor (Diverted Land) and he submitted his report to the Sub-Divisional Officer on 18-9-1961, wherein he proposed the premium to be paid by the petitioner at Rs. 4,050/- and the yearly assessment of Rs. 1,235/-. The Sub-Divisional Officer by his order dated 16/17th August 1962 appears to have approved the report of the Nazul

Maintenance Surveyor and directed the applicant (Petitioner) to pay the total amount of Rs. 5,285/- within a fortnight of his order, failing which the permission for diversion was to be revoked.

3. It appears that the petitioner had also made an application to the Municipal Committee, Wardha, on 27-11-1962 for sanction to the layout and by letter dated 25th April 1962, the Municipal Committee, Wardha informed the petitioner that she should prepare a map according to the conditions and other information as suffused by the memorandum dated 21-4-1962 of the Town Planning and Valuation Department, Nagpur and in that map she should show the proposed roads, drains and bridges and then file the same in the Committee for layout sanction.

4. Against the order of assessment made by the Sub-Divisional Officer acting on the report of the Nazul Maintenance Surveyor, the petitioner filed an appeal before the Collector, who by his order dated 11th March 1963 dismissed the appeal with some modification. The contention raised by the petitioner before the Collector was that she had not yet diverted the fields to non-agricultural use as originally intended and, therefore, she was not liable for premium or enhanced assessment as being arbitrary and bad in law. The Collector has observed in his order that there was nothing on record to show that actual diversion has taken place and the claim for immediate payment of premium or enhanced assessment may not, therefore, be justified in the light of the decision of the Board of Revenue of the then Madhya Pradesh reported in *Hanuman Bax Ramkaran v. State*, 1955 Nag LJ 502. The Collector, however, took the view that the levy of the assessment could not wait indefinitely and, therefore, some time limit ought to be enforced within which the petitioner must put the lands to non-agricultural use, failing which the permission to divert could be revoked. The Collector directed that within the months within which the petitioner must put the land to non-agricultural use as per the approved layout and pay the premium and the standard rate of assessment, further directing that failing which the permission for diversion will stand cancelling. The Collector found that the premium and the enhanced assessment as worked out by the Nazul Maintenance Surveyor was correctly calculated. The effect of this order of the Collector dated 11th March 1963 appears to us to be that the payment of the premium and the new assessment levied would be effective from a date six months after the date of this order, namely, from 11th of September 1963. It may be noted at this stage that even though the order for permission for diversion has been granted by the Sub-Divisional Officer on 12-12-1960, still as we read the order of the Collector we find that in his new order the fresh assessment would be payable from 11th of September 1963 and not from 12th of December 1960.

5. Not satisfied with this order, the petitioner filed a revision application before the Commissioner. Before the Commissioner, it was contended by the petitioner that the limitation of six months put by the Collector for diverting the land to non-agricultural purpose was unreasonable in view of the fact that the layout had not

been finally sanctioned by the Municipal Committee. The Commissioner took the view that once an order has been passed by the competent authority for changing the classification to the non-agricultural category, the land cannot be assessed as agricultural land. He also took the view that once the order has been passed the prescribed premium has to be paid by the land owner. He, therefore, set aside the limitation of six months put by the Collector and maintained the other part of the order. The petitioner further moved the State Government by an application in revision and the State Government maintained the order of the Commissioner. The petitioner has now challenged these orders by this writ petition.

6. The petitioner contends that she has not yet made uses of the land for the purpose for which the permission to divert the land was obtained and therefore, she was not liable either to pay the premium fixed by the Sub-Divisional Officer, or the reassessment and, therefore, sought quashing of the orders of the authorities below. It appears to be the contention of the petitioner that the premium can be recovered from the petitioner only when the land is made use of for the purpose for which the assessment as on the basis of non-agricultural land can only be recovered from her from the date from which the land is made use of as a non-agricultural land for which the permission was granted to her. The respondents contend that the fixation of the premium as well as the assessment is proper and the petitioner is liable to pay the premium, but the return does not disclose from which date the liability of the petitioner to pay the new assessment accrues. There is also no allegation that the land has been put to any particular non-agricultural use after the permission was granted by the Sub-Divisional Officer.

7. Section 51 of the Madhya Pradesh Land Revenue Code, 1964, makes every land liable to payment of revenue to the State Government to whatever purpose the land may be applied and wherever situate, except such land as has been wholly exempted from such liability by special grant of or contract with the State Government or under the provisions of any law or rule for the time being in force. Section 52 of the Code divides the lands in non-urban areas into three categories :

- (a) for the purpose of agriculture ;
- (b) as sites for dwelling houses and for purposes other than those specified in item (a) or (c);
- (c) for industrial or commercial purposes.

The assessment of land revenue has to be made taking into consideration these three categories of lands. Sub-section (2) of Section 52 further provides that where land assessed for use for any one purpose is diverted to any other purpose, the land-revenue payable upon such land, is liable to be altered and assessed in accordance with the purpose to which it has been diverted. Sub-section (5) then provides that where land is diverted and land revenue is assessed thereon under the provisions of this section, the Collector shall also

have power to impose a premium on the diversion in accordance with rules made under this Code, the only exception being that no premium is to be imposed for the diversion of any land which immediately before the coming into force of this code was held in malik makbuza right.

8. Rules were framed by the then Madhya Pradesh Government in exercise of the powers conferred by the Madhya Pradesh Land Revenue Code. They provide for fixation of the premium on diversion as well as the reassessment on such diverted land. In order to divert the land from one purpose to another, the holder of the land has to take the permission of the Collector and for that purpose he has to apply under S. 156 of the Madhya Pradesh Land Revenue Code, who may refuse or grant the permission on such conditions as he may think fit. Sub-section (5) of Section 156 then provides that if any land has been diverted in contravention of an order passed or of a condition imposed under any of the foregoing sub-sections, the Collector may serve a notice on the person responsible for such contravention, direction him to use the said land for its original purpose or to observe the condition. Then sub-section (6), further empowers the Collector to himself take steps or cause them to be taken for the purpose of putting the land to the proper use if on a notice being given, the tenure-holder fails to take such steps within the time given. The Collector is also authorised to impose a penalty for contravention of the condition or an order passed by him. Below Section 156 of the Code, there is an Explanation which reads :

"Diversion in this section means using land assessed to one purpose u/s 52 to any other purpose mentioned therein but using land for the purpose of agriculture where it is assessed with reference to any other purpose shall not be deemed to be diversion."

9. What is, therefore, provided u/s 156 is the granting of permission to divert the land, with or without condition, and to take steps to prevent the breach or contravention of the conditions imposed by that order or the contravention of the order passed by the Collector. The Explanation to this section makes it clear that the diversion contemplated by this section is not the mere changing of the classification of the land from one to the other, but using of the land assessed to one purpose to any other purpose. By merely granting the permission to divert or use the land for a different purpose, the land is not actually diverted for that purpose or used for that purpose. It is only when some overt act on the land is done by taking any steps on the permission of using the land for non-agricultural purpose, then only it could be said that the land has been used of non-agricultural purpose and thus diverted within the meaning of Section 156 read with the Explanation thereunder. The provisions of S. 52 should also have to be read in the same light. Reading sub-section (2) of Section 52, it appears to us that the land revenue payable upon the land is liable to be altered and assessed if the land used for one purpose is diverted to any other purpose. That means that the alteration or fresh assessment can be made only if the land has been

made use of for a different purpose. A mere permission to divert or to make use of that land for another purpose would not make that land liable to an alteration or fresh assessment. It is only when the land is actually put to that different use, then only there can be a fresh assessment on the said land. That appears to us to be the proper construction to be put on the provisions of Section 52 or Section 156 of the Madhya Pradesh Land Revenue Code. Through the classification on granting permission may change still the land remains the same as before until the land is put to a different use and there is no reason why, in these circumstances, the assessment should change during the period of settlement. It is only after the land has been put to a better or improved use that the land would get that character which is liable to a fresh assessment on a fresh basis.

10. Before the Madhya Pradesh Land Revenue Code has come into force from 1-10-1955, the tenures were governed by the Central Provinces Land Revenue Act, 1917 and Section 104-A provides that if in the opinion of the Deputy Commissioner the value of any land in any mahal is altered in consequence of its diversion from an agricultural purpose to a non-agricultural purpose or from a non-agricultural purpose to an agricultural purpose since it was last assessed, the assessment shall be liable to be revision and the land-revenue assessed by the Deputy commissioner with reference to the altered value of such land in accordance with the rules made u/s 106. This provision is more or less similar to the provisions of sub-section (2) of S. 52. Merely by getting a permission to divert the value of the land does not shoot up. It is only after the land is put to a different use, then according to the circumstances prevailing in the area that the value of the land may go up requiring the revised assessment of the said land. That seems to be the principle underlying Section 104-A of the then C. P. Land Revenue Act, 1917. The interpretation of Section 104-A of the then C. P. Land Revenue Act came up for consideration before the Madhya Pradesh Board of Revenue in 1955 Nag LJ 502 and the learned Member of the Board of Revenue has very succinctly put the matter in paragraph 8 of his judgment it says :

"So far as the point of law urged by Shri Badkas is concerned, the notification of 9-2-1953 itself seems sufficiently clear in that it contemplates "fixing the assessment on lands used for constructing residential buildings and buildings of an ancillary character, the same being a non-agricultural purpose."

It does not contemplate the revision of assessment of land which are merely intended to be used for constructing residential buildings etc. It may no doubt happen that, with a view to avoiding future trouble, an owner of land, who has decided to divert it for non-agricultural purposes asks for revision of assessment voluntarily. In such a case, there is no objection to making the necessary enquiries and telling him what the revised assessment would stand at. But the revision cannot take effect, until "actual diversion" takes place, when of course it comes into force with the commencement of the agricultural year following. What constitutes "actual diversion" will depend on the facts of each case. The time for ordering revision may arrive in most cases

considerably before the entire area is covered by construction for residential and ancillary purposes. But in every case, should be some evidence of effect being given to the mere intention to divert. A more or less systematic disposal by the owner of plots in the area to non-agricultural prices or commencement of building operations over a part of the area so as to render the rest of the area unsuitable for agricultural purposes constitutes the kind of evidence to suggest diversion."

11. That seems to us to be the correct position and the correct reading of the provisions of Section 104-A of the C. P. Land Revenue Act and now the sub-section 92) of S. 52 of the M. P. Land Revenue Code. It is no doubt true that when the land is diverted from one purpose to another purpose, the premium has to be fixed and so also the fresh assessment. The payment of premium in fact is a condition for diversion of the land. If the tenure-holder fails to pay the premium, we do not think that still the premium could be recovered from the owner, if he does not use the land for a different purpose. The utmost that could be done by the Collector is to revoke the permission which has been granted on the failure of the tenure-holder to pay the premium. Section 156 itself provides that if any person makes unauthorised use of the land, that is uses the land for the purpose different than the one for which it has been assessed without any permission, then he is liable to a penalty under sub-sections (4) and (5) of S. 156. Therefore, in this case, if without paying the premium the petitioner were to make use of the land for non-agricultural purpose, then it was in the power of the Collector to revoke the permission which was granted to him already.

12. The construction which we put on the provisions of Sections 52 and 156 of the Madhya Pradesh Land Revenue Code gets further support from the provision which has now been made in the Maharashtra Land Revenue Code, 1966, which has been now made for unifying and amending the law relating to land and land revenue in the State of Maharashtra. The relevant provisions of this Code are Sections 44, 115 and 116. Section 44 corresponds to Section 156 and Sections 115 and 116 correspond to Section 52 of the Madhya Pradesh Land Revenue Code, Section 44 gives the procedure for conversion of use of land from one purpose to another, then Section 115 reads as under :

"Except as otherwise directed by the State Government in the case of co-operative societies and housing boards being in force in this State, the non-agricultural assessment shall be levied with effect from the date on which any and land actually used for a non-agricultural purpose."

Then Section 116 provides -

"The non-agricultural assessment fixed according to the provisions of Sections 110 and 114 shall remain in force for a period of fifteen years from the date on which the land is actually used for the non-agricultural purpose, or as the case may be, from the date of change of user of the land; and on the expiry of such period, it shall be liable to revision; but till the assessment is revised, the

assessment fixed as aforesaid shall continue in force." (

The wording of these two Sections 115 and 116 of the Maharashtra Land Revenue Code leave no doubt that the new assessment has to come into force only from the date on which the land has been actually used for non-agricultural purpose. The reason for this is quite apparent, because the value of the land is enhanced only after it is put to a better use and not before. The construction, therefore, which we put on the provisions of Section 52 is a reasonable construction and it appears that in order to remove any doubts, if there be any, the new Code has now made it clear beyond any pale of doubt. It must be taken that the construction which we have put on the provisions of Section 52 must be taken to be the real construction on that provision and the new assessment could not commence unless and until the land was actually put to use for non-agricultural purpose.

13. We, therefore, do not agree with the contention raised on behalf of the State that the new assessment will become operative from the date of the permission granted by the Sub-Divisional Officer. In fact, as observed by us earlier, even the Collector has not taken the view that the new assessment has become operative from the date of the order of the Sub-Divisional Officer granting permission on 12-12-1960. Even according to the order of the Collector which has not been in that respect set aside by the Commissioner, the assessment would start from 11-9-1963 and according to the order of the Commissioner from 11-3-1963. WE accordingly hold that in principle fresh assessment as on non-agricultural land will commence from the date from which the land has actually been put to a non-agricultural use. As and when the land has been so used is a question of fact and is required to be determined in each particular case. It is not possible for us to state in the state of record here, as to when the land in question, though permitted to be diverted, has been actually made use of for non-agricultural purpose. The Board of Revenue in the decision cited supra has given certain instances as to when the land can be said to have been made use of for a non-agricultural purpose. These are mere illustrations and there may be other instances or other steps which would amount to using the land for a non-agricultural purpose. It will be for the Collector to find out as to whether the land in question has been put to use for a non-agricultural purpose and if so, on what date. The commencement of the new assessment as on non-agricultural land will depend upon the finding given on these points.

14. We, therefore, remand the case to the Sub-Divisional Officer to find out as to whether the land in question has been actually used for a non-agricultural purpose by the petitioner and if so, from which date. On determining this question, the petitioner will be required to pay the new assessment from that date. With these observations, we sent back the case to the Sub-Divisional Officer. The petition, therefore, succeeds and is allowed. The respondent No.1 will pay the costs of the petitioner.

15. Case remanded.