
(1968) 10 GUJ CK 0005
In the Gujarat High Court

Budhukhokhar Shahbhai

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 25-10-1968

Acts Referred:

Saurashtra Land Reforms Act, 1951 — Section 44, 44
Saurashtra Land Reforms Rules, 1951 — Rule 99, 99(1)

Citation : (1969) 10 GLR 641

Hon'ble Judges : P.N. Bhagwati, C.J

Bench : Single Bench

Judgement

P.N. Bhagwati, C.J.—The question arising in this petition lies in a very narrow compass and a brief statement of the facts giving rise to the petition is sufficient to explain how it arises. The petitioners were formerly girasdars holding lands in five villages, namely, Kutiyana, Mandva, Pasvali, Ujad Thepda and Sagras situate in Kutiyana Taluka, Junagadh District. Several of these lands were being cultivated by tenants and on the coming into force of the Saurashtra Land Reforms Act, 1951, the tenants made applications to the Mamlatdar u/s 28 of the Act for acquisition of occupancy rights in respect of the lands held by them as tenants. Section 29 provided as to how the Mamlatdar should deal with an application u/s 28 and it said that on receipt of such application the Mamlatdar shall issue notice to the girasdar concerned, and after giving the parties an opportunity of being heard, shall make an inquiry in the prescribed manner and after making such inquiry, according to Section 30(1), the Mamlatdar may, subject to any order of allotment for gharkhed, pass an order specifying therein (a) the holding or the part thereof in respect of which the tenant may be declared to be an occupant, (b) the assessment on such occupancy holding, and (c) the amount payable by the tenant to the girasdar at compensation in respect of such occupancy holding. The Mamlatdar was required to specify in the order u/s 30(1) the assessment on the occupancy holding in respect of which the tenant was declared to be an occupant and the power to fix the assessment on the occupancy holding was conferred upon him u/s 44. That section, in so far as is

material for the purpose of the present petition, provided :

44. (1) For the purposes of this Act, assessment shall mean, in relation to any land, until the village in which such land is situate is surveyed and settled, assessment calculated on an arithmetic average of assessment leviable in the surrounding and adjoining khalsa (or assessed non khalsa) lands villages.

(2) For the purpose of determining the assessment on any land the Mamlatdar may hold an Inquiry in the prescribed manner and fix the assessment on such land and the assessment so determined shall be published in such manner as may be prescribed;

Provided that where the assessment so calculated is manifestly unfair, Government may modify it, keeping in view the above principle.

Section 46 dealt with functions of the Mamlatdar and provided that the Mamlatdar may for the purposes of the Act perform amongst others the following functions, namely:

(1) to determine the amount of compensation payable to a Girasdar by the Government and the tenant "and"

(n) to determine the amount of assessment u/s 44.

Section 51(1) declared that an appeal shall lie to the Collector against any order of the Mamlatdar and Section 52(1) provided that an application for revision may be made to the Tribunal against any order of the Collector on certain grounds. Now during the pendency of the applications of the tenants for acquisition of occupancy rights in respect of the lands held by them as tenants, the Mahalkari exercising the power of the Mamlatdar proceeded to fix the average rates of assessment of girasdari lands in the villages of Kutiyana, Mandva, Pasvali, Ujad Thepda and Sagras u/s 44 read with Rule 99 of the Saurashtra Land Reforms Rules, 1951 made by the Government In exercise of the rule-making power conferred upon it u/s 59. Rule 99 dealt with the mode of determining assessment u/s 44 and provided in its material part:

99. (1) The Mamlatdar shall, for the purpose of determining the assessment on any land u/s 44 of the Act, follow the following procedure

(1) In a village where there is khalsa as well as non-khalsa land, the assessment of the non-khalsa land in that village shall be the same as the average of the assessment or the Udhad of the Khalsa land in that village:

Provided, however, that in the case of very rich land or garden land, with fruit trees situate in a village, if the assessment of such land, calculated on the basis of average rate of assessment in the village, is low having regard to the produce of such land, the assessment of such land shall be calculated at four times, three times or double the average rate of assessment, prevailing in the village according as such land is classified as Uttam, Madhyam or Kanishtha having regard to the quality of the land or soil and the number of fruit trees growing or

standing on such land.

(2) In a village which is wholly non-khalsa, the assessment for that village shall be calculated on an arithmetic average of the assessment of Udhad leviable in the surrounding and adjoining khalsa lands or villages.

The Mahalkari in exercise of the power u/s 44 read with Rule 99 prepared and submitted lists showing the assessment rates to be applied to non-khalsa land and after considering the objections received against the proposed assessment rates, the Director of Land Records amended the assessment rates and the average rates of assessment of non-khalsa, that is girasdari, lands in these five villages were fixed at different figures. The case of the petitioners was that the lands in respect of which applications for occupancy certificates were made by the tenants were very rich lands or garden lands with fruit trees and the assessment of those lands calculated on the basis of the average rates of assessment fixed generally for the lands in the villages would be low having regard to the produce of those lands and they therefore made applications to the Mahalkari under the proviso to Rule 99(1) for fixing the assessment on those lands at four times, three times or double the average rate of assessment prevailing in the villages according as the lands were classified as Uttam, Madhyam or Kanishtha, having regard to the quality of the land or soil or the number of fruit trees standing or growing on these lands. It appears that, pursuant to the applications of the petitioners, the Mahalkari examined and inspected the lands accompanied by the then Director of Land Records, Junagadh and he was of the view that these lands fell within the category of lands described in the proviso to Rule 99(1) and be classified them as Uttam, Madhyam and Kanishtha and prepared a list showing the classification into these three categories. The Director of Land Records by his letter dated 18th May 1956 asked the Mahalkari that these lists should be published for the purpose of inviting objections and whatever objections were received within a period of one month should be heard and decided by him. The Mahalkari accordingly by an order dated 31st May 1956 published the assessment on these lands according to the classification made by him and invited objections. The Mahalkari thereafter heard the objections which were received against the classification made by him and it appears that the objections were filed not only by the petitioners but also by the tenants. The Mahalkari after hearing the objections submitted his report to the Director of Land Records along with a letter dated 14th October 1956. This report was forwarded by the Director of Land Records to the Commissioner, Rajkot Division and the Commissioner after hearing the parties passed an order dated 23rd December 1963 holding that "the rates fixed by the Mamlatdar u/s 44 of the Land Reforms Act in respect of these villages are reasonable and proper and these are not cases where increase in rates of assessment of villages under the said proviso (that is proviso to Rule 99(1)) can be made." The Commissioner accordingly rejected the application of the petitioners for increase in the rate of assessment under proviso to Rule 99(1). The petitioners being aggrieved by the order made by the Commissioner preferred a revision application to the State

Government but the revision application was also rejected by the State Government by an order dated 10th December 1965. The only cryptic ground on which the State Government chose to reject the application was that "after careful consideration the Government had come to the conclusion that no interference in that decision of the Commissioner seemed to be proper and that no interference in that decision was called for. On receipt of this order of the State Government, it appears, a further application was made by the petitioners to the State Government and whilst rejecting this application on 1st February 1966, an additional ground was given by the State Government and that ground was that in making the order dated 23rd December 1963, the Commissioner had exercised the power of the State Government and it was, therefore, not competent to the State Government to exercise its revisional power u/s 211 of the Land Revenue Code. The petitioners thereupon preferred the present petition challenging the order of the Commissioner dated 23rd December 1963 as also the revisional orders passed by the State Government on 10th December 1965 and 1st February 1966.

2. It is apparent from the statement of facts given above that the average rates of assessment in respect of girasdari, that is non-khalsa, lands situate in the aforesaid five villages were fixed by the Mamlatdar u/s 44 read with Rule 99 and they were the average rates of assessment applicable generally to girasdari, that is non-khalsa lands in those villages. But so far as the lands in possession of the tenants were concerned in respect of which the tenants had made applications for acquisition of occupancy rights, they were, according to the petitioners, lands falling within the proviso to Rule 99(1) and the assessment on those lands was therefore liable to be determined at four times, three times or double the average rates of assessment fixed for those villages according as those lands were classified as Uttam, Madhyam or Kanishtha. The petitioners therefore made applications to the Mamlatdar for the purpose of determining the assessment on those lands in accordance with Rule 44 read with the proviso to Rule 99(1). Now on the plain terms of Section 44 the power to determine the assessment on any land is vested in the Mamlatdar and this is made amply clear by the provision enacted in Section 46(n). The opening part of Rule 99 also clearly indicates that it is for the Mamlatdar to determine the assessment on any land u/s 44. Now the mode of determination of assessment on any land to be made by the Mamlatdar u/s 44 is laid down in Rule 99(1) and the proviso to Rule 99(1) has therefore to be applied by the Mamlatdar in determining the assessment on land wherever the land falls within the description given in the proviso and the proviso becomes applicable. It is for the Mamlatdar to decide while determining the assessment on any land whether the assessment should be made in accordance with the proviso and for that purpose, he has to consider whether the land falls within the proviso. He has to decide whether the land is "very rich land or garden land with fruit trees" and the assessment on such land calculated on the basis of the average rate of assessment is low having regard to the produce of such land. If this condition is satisfied, he is under an obligation to calculate the assessment

on such land at four times, three times or double the average rate of assessment of the village according as the land may be classified Uttam, Madhyam or Kanishtha if, on the other hand, this condition is not satisfied, the proviso would not apply and the assessment on such land would be made on the basis of the average rate of assessment. The order of the Mamlatdar determining the assessment, whether on an application of the proviso or otherwise, would be appealable under Section. 51(1) to the Collector and against the order of Collector in appeal, a revision application, albeit on limited grounds, would lie to the Revenue Tribunal u/s 52(1). Rule 101(1) also postulates that against the order of the Mamlatdar determining the assessment on any land, an appeal would lie to the Collector and a further revision to the Revenue Tribunal The State Government is not given any power to determine the assessment on any land except in the case contemplated by the proviso to Section 44(2) where it is provided that where the assessment calculated by the Mamlatdar is manifestly unfair, the State Government may modify it keeping in view the principle set out in Section 44(1), But this power of modifying the assessment conferred upon the State Government is clearly a power applicable only to the determination of the average rate of assessment. It can have no application where the question is whether the assessment should be made under the proviso, for the proviso is clearly obligatory in its terms and leaves no scope for an argument as to whether the assessment is fair or unfair. The proviso says that, in cases falling within its scope and ambit, assessment shall be determined at four times, three times or double the average rate of assessment according as the land is classified as Uttam, Madhyam or Kanishtha if the average rate of assessment fixed by the Mamlatdar is manifestly unfair, the State Government can certainly modify it under the proviso to Section 44(2) but once the average rate of assessment is determined by the Mamlatdar and there is either no modification by the State Government under the proviso to Section 44(2) or such modification is made by the State Government and the average rate of assessment is finally determined, the State Government goes out of the picture altogether and it has no power to interfere with the determination of the Mamlatdar whether the proviso applies or not. The question whether the proviso to Rule 99(1) applies or not is one to be determined by the Mamlatdar and no power is given to the State Government to decide it.

3. Here in the present case, we find that it was the Commissioner and not the Mahalkari who decided that the proviso to Rule 99(1) does not apply and consequently the assessment on the lands in question must be calculated on the basis of the average rate of assessment. The Commissioner clearly acted beyond his power in holding that the proviso to Rule 99(1) was not applicable and usurped the jurisdiction which belonged to the Mamlatdar u/s 44 read with Rule 99. The order passed by the Commissioner on 23rd December 1963 negating the applicability of the proviso to Rule 99(1) and rejecting the applications of the petitioners was therefore beyond his jurisdiction and must be declared to be null and void. And if that be so, the revisional orders passed by the State

Government must also be held to be bad, for there could be do revision against a nullity.

4. I therefore allow the petition and make the rule absolute by issuing a writ of mandamus quashing and setting aside the order of the Commissioner dated 23rd December 1963 and the revisional orders of the State Government dated 10th December 1965 and 1st February 1966. The Mamlatdar having jurisdiction over the area in which the lands are situate will proceed to dispose of the applications of the petitioners in exercise of jurisdiction conferred upon him u/s 44 read with Rule 99. The first respondent will pay the costs of the petition to the petitioners.