

(1957) 02 BOM CK 0038

In the Bombay High Court

Case No : Special Civil Application No. 3079 of 1956

Golden Tobacco Co. Private Ltd.

APPELLANT

Vs

State of Bombay

RESPONDENT

Date of Decision : 05-02-1957

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 203, 204, 211
Bombay Revenue Tribunal Act, 1939 — Section 3, 4, 5, 8, 9
Constitution of India, 1950 — Article 11, 226
Government of India Act, 1935 — Section 296(2)

Citation : AIR 1957 Bom 186 : (1957) 59 BOMLR 409 : (1957) ILR (Bom) 795

Hon'ble Judges : Shah, J;Gokhale, J

Bench : Division Bench

Advocate : J.R. Desai, for the Appellant; M.P. Amin, General and V.S. Desai, Asst. Govt. Pleader, for the Respondent

Judgement

Shah, J.—This is an application by the petitioners praying that an appropriate Writ be issued by this Court restraining the State Government from enforcing the Collection Order dated 26-7-1956 against the petitioners for recovery of Rs. 4,874/- in a manner prejudicially affecting the fundamental rights of the petitioners by levy of non-agricultural assessment otherwise than by authority of law.

2. The petitioners are the owners of. S. Nos. 193, 194A. Hissas Nos 1 and 3, 195 Hissas Nos. 13h and 17. 262 Hissas Nos. 1. 2 and 3 (part) of Vile Parle in Greater Bombay, The lands admeasure 13.539 square yards in area. The lands have been converted to non-agricultural user since the year 1928 and several buildings have been erected thereon by the petitioners, Originally these lands were part of a Khoti estate. In 1950 the State Legislature enacted the Salsette Estates (Land Revenue Exemption Abolition) Act of 1951, and the lands became Khalsa lands. Thereafter the Additional District Deputy Collector, Bombay Suburban District, levied non-agricultural assessment on the lands by his order No. L. N. D. A. 3461, dated 16-8-1955. for the period between 1-3-1952, and 31-7-1957, and

called upon the petitioners to pay Rs. 4,874/-forthwith and also directed, the petitioners to pay future assessments at an annual rate of Rs. 1,218/8/- to the Mamlatdar of South Salsette.

3. Against the order passed by the Deputy Collector an appeal was preferred by the petitioners to the Collector u/s 203 of the Bombay Land Revenue Code. The Collector held that consequent upon the introduction of the Salsette Estate (Land Revenue Exemption Abolition) Act of 1951, the lands in ex-khot villages were liable to pay land revenue. "He observed that as the lands were used for non-agricultural purposes, the petitioners were liable to pay non-agricultural assessment in respect thereof. But in his view no order levying non-agricultural assessment at standard rates could be passed against the petitioners retrospectively. In so holding, the Collector followed certain decisions of the Bombay Revenue Tribunal. The collector accordingly modified the order passed by the Deputy Collector and directed that assessment be paid by the Petitioners for the year 1955-56 and thereafter. The papers of the case were then called for by the Government of Bombay and the Government in purported exercise of the powers u/s 211 of the Bombay Land Revenue Code set aside the order of the Collector, and restored the order of the Deputy Collector. It appears no intimation of this order was given to the petitioners, by the Government of Bombay but by letter dated 26-7-1956, the Collector, Bombay Suburban District, called upon the petitioners to pay to the Mamlatdar, Andheri non-agricultural assessment according to that order of the Government, On receiving this demand the petitioners applied to this Court under Article 226 of the Constitution of India for the issue of a Writ described hereinbefore.

4. The principal contention urged in support of the petition is that the State Government has exercised jurisdiction to revise the order of the collector when it is not invested with that jurisdiction. It is urged that the jurisdiction to revise the order of the Collector is vested in the Bombay Revenue Tribunal constituted under Bombay Act 12 of 1939 and the State Government is incompetent since the enactment of that Act to exercise jurisdiction to revise the decisions of the Collector in a revenue case, in exercise of powers u/s 211 of the Bombay Land Revenue Code.

5. Chapter 13 of the Bombay Land Revenue Code deals with appeals and revisions which may lie against the order of any revenue authority. By Section 203 Power is conferred upon revenue officers to entertain appeals, against the orders of their immediate subordinates. By Section 211 power is conferred upon the State Government and upon revenue officer not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Survey, to call for and examine the record of any inquiry or the proceedings of any subordinate revenue officer for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer. The State Government and the other revenue Officers have the power, if it appears that any decision or order or proceedings so

called for should be modified, annulled or reversed, to pass such order thereon as they deem fit.

6. As observed by their Lordships of the Privy Council in *Secy. of State v. Anant Krishnaji Nulkar* 36 Bom LR 242: 1934 ATE PC 9 the amplitude of the powers conferred by Section 211 of the Bombay Land Revenue Code is striking. The State Government is entitled to call for the papers without any restriction as to time after the date of the order sought to be revised has been passed and the State Government is entitled to consider the legality or even the propriety of any decision or order passed, and also the regularity of the proceedings held by a subordinate revenue Officer.

7. By the Government of India Act, 1935, Section 296(2). It was provided that if in any Province jurisdiction to entertain appeals or revise decisions in revenue cases was, Immediately before the commencement of Part III of the Act, vested in the Local Government the Governor shall constitute a tribunal, to exercise the same jurisdiction until other provision in that behalf is made by Act of the Provincial Legislature. Pursuant to this provision the Bombay Legislature passed Bombay Act 12 of 1939 providing for the constitution of a Revenue Tribunal for the Province of Bombay. By Section 3 of Bombay Act 12 of 1939 power was conferred upon the State Government to constitute a Tribunal and by Section 4 the powers and functions of the Tribunal were defined. It was provided by Sub-section (4) of Section 4 that the

"Tribunal shall exercise such Jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the State Government immediately before the first day of April 1937 under any law for the time being in force".

By Sub-section (2) it was provided that without prejudice to the generality of Sub-section (I) the Tribunal shall have jurisdiction to entertain appeals and revise decisions in all revenue cases, arising under the provisions of the enactments specified in the Schedule in which such Jurisdiction was vested in the State Government immediately before the first day of April 1937, and in all cases specified in Section 9; and by item No. 7 in the Schedule to the Act the jurisdiction of the State Government to entertain appeals and revision in revenue cases under Sections. 204 and 211 of the Bombay Revenue Code was to be exercised by the Tribunal, By Section 5 it was provided that

"in the exercise of the jurisdiction conferred upon it u/s 4 in any case, the Tribunal shall have and may exercise all the powers which the State Government had or could have exercised in such case".

Section 8 of the Act provided that

"notwithstanding anything to the contrary contained in any law for the time being in force no appeal or application for revision shall lie to the Commissioner in any case in which an appeal or application for revision lies to the Tribunal under the Act".

It may be observed that Section 8 has since been repealed by Bombay Act 28 of 1950 when the office of the Commissioner was abolished by amendment of the Bombay Land Revenue Code.

8. That the power of the State Government to entertain appeals u/s 204, against the orders of Revenue Commissioners and to entertain revision applications u/s 211 of the Bombay Land Revenue Code is conferred upon the Bombay Revenue Tribunal by Sections 4 and 5 of the Bombay Revenue Tribunal Act, 1939, cannot be disputed. But it is urged on behalf of the State of Bombay that the jurisdiction of the Tribunal to entertain appeals and revision applications in revenue cases is not exclusive, but can be concurrently exercised by the Tribunal and by the State Government. It is contended that by the enactment of Sections 4 and 5 the authority of the State Government to exercise powers under Sections 204 and 211 of the Land Revenue Code has not been taken away. We are unable to accept that contention. By Section 4 it is expressly provided that the Tribunal "shall exercise such jurisdiction in revenue cases as was vested in the State Government" before 1st April 1937. In our judgment the Legislature having enacted that the Tribunal shall exercise jurisdiction in revenue cases the power of any other authority to exercise that jurisdiction is excluded. It is implicit in Sections 4 and 5 that in revenue cases where prior to 1-4-1937, jurisdiction could be exercised by the State Govt., the jurisdiction shall be exercisable only by the Tribunal and by no other authority. Even though from the order of a Collector an appeal could lie to the Commissioner u/s 203 of the Land Revenue Code, in order to effectuate the intention of the Legislature the power of the Commissioner to entertain appeals and revision applications was expressly taken away by Section 8 of the Act. The power to entertain appeal, and revision applications under Sections 204 and 211 of the Land Revenue Code in revenue cases is by the Revenue Tribunal Act made exercisable by the Tribunal, and in our judgment that power cannot be exercised by the State Government. If any other view were taken, it would introduce the greatest confusion in revenue administration, if the contention of the Advocate-General be accepted it would be open to the State Govt., and the Tribunal to simultaneously to exercise the powers vested in them respectively by Section 211 of the Land Revenue Code and Sections 4 and 5 of the Bombay Revenue Tribunal Act, against a decision in a revenue case of a subordinate revenue officer; and cases may not be wanting in which inconsistent orders may be passed by the two authorities.

9. The learned Advocate-General contends that in any event citizens who were aggrieved by the order of any subordinate revenue authority in a revenue case are bound to approach the Tribunal by way of an appeal or revision application; but, the State Government is entitled in exercise of the powers u/s 211 of the Bombay Land Revenue Code to revise all decisions of a subordinate officer even in revenue cases and it is not required to appeal or apply to the Tribunal. That distinction, it is contended, is attributable to the fact that a revenue officer acts on behalf of the State and in exercise of the powers delegated to him by the State, or functions as an agent of the State, and that in a revenue case there are

really no two contesting parties, an order passed by a revenue officer in a revenue case being substantially an executive order on behalf of the State, We are unable to accept this contention. When by the Bombay Land Revenue Code authority is conferred upon revenue officers, the source of their authority is the Code and not any delegation of powers by the State. In exercising his statutory powers, a revenue officer is not acting as an agent of the State in the administration of the Land Revenue Code. Again in a revenue case, which substantially means a case which raises a dispute as to the right of the State to impose, levy and recover revenue the State is as much a contesting party as a citizen from whom a larger amount of revenue is sought to be levied or collected. The proceedings before the Mamlatdar the Deputy Collector and the Collector in revenue leases are quasi-judicial proceedings and it could not have been the intention of the Legislature that if the State Government was aggrieved by the decision of a revenue officer it need not apply to the Tribunal, but could assume to itself the power to correct the decision and the citizen alone is bound to approach the Tribunal. It was presumably because it was thought that the State should not be both a litigant and a judge in its own cause, that the Bombay Revenue Tribunal Act of 1939 was enacted by the Legislature. The purpose of the Act, would in our judgment be wholly defeated if the State Government is entitled to judge for itself whether an order passed to the detriment of State revenue by a revenue officer is legal, proper or regular. Cases may occur in which a citizen may partially succeed before a revenue authority and with a view to obtain further redress he may resort to the Tribunal, whereas the State Government being aggrieved by the order of the revenue officer, in so far as that officer grants relief to the citizen, if the argument advanced by the learned Advocate-General is accepted, may on its own motion set aside the order. In such circumstances the possibility of conflicting decisions of the Tribunal and of the State Government on the same subject-matter can easily be envisaged. We are unable to find any support in the scheme of the Bombay Revenue Tribunal Act for the submission implicit in the contention of the State that the jurisdiction of the State Government u/s 211 of the Land Revenue Code is transferred to the Revenue Tribunal only in those cases where the citizen is aggrieved by the order of a revenue officer in a revenue case.

10. It also appears, if the argument of the Advocate-General is well-founded, that there will be discrimination between the citizen and the State, in the matter of the authority to be approached for obtaining redress against an order passed by a revenue officer, as the citizen will be bound to approach the Tribunal whereas the state will be entitled to set its own machinery in motion and set aside an order which the Government thinks is illegal, improper or irregular. There would be infringement of the equal protection clause of the Constitution, The learned Advocate-General suggested that such a distinction is based on a valid classification. But we are unable to appreciate any rational basis for the classification, which, we are asked to assume has been made by the Legislature, that for obtaining redress in a revenue case against the decision of a revenue

officer a citizen must approach the Tribunal but the State Government is entitled to invoke its own machinery to set aside the order. We are therefore unable to agree that the State Government has appellate and revisional jurisdiction in revenue cases after the enactment of the Bombay Revenue Tribunal Act 1939. against the decisions or proceedings of revenue Officers.

11. On that view, we direct that the order, dated 26-7-1956. Passed by the Collector, Bombay Suburban District, requiring the petitioners to pay the Mamlatdar, Andheri. the non-agricultural assessment demanded be quashed. The petitioners will be entitled to their costs from the State.

12. Order quashed.