
(1983) 10 GUJ CK 0007
In the Gujarat High Court

Mistry Vijubhai Mulchanddas

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-10-1983

Acts Referred:

Gujarat Land Revenue (Amendment) Rules, 1977 — Rule 81(1), 81(1), 81(1)(b)

Citation : (1984) 1 GLR 523

Hon'ble Judges : R.J. Shah, J;B.K. Mehta, J

Bench : Division Bench

Judgement

B.K. Mehta, J.—By this petition, the petitioner who is the owner of and occupying land of Section No. 54 situate within the revenue limits of village Jesalpur in Chanasma taluka of Mehsana district has moved this Court for appropriate writ, order and direction to quash and set aside the Gujarat Land Revenue (Amendment) Rules, 1977 as ultra vires the Constitution of India, and also the Government circular bearing No. 743 of 1979 of June 7, 1979 and the notice of recovery of May 15, 1980 raising demand for non-agricultural assessment of Rs. 1,841/- for the period from 1-8-76 to 31-7-1979 at the rate of six paise per sq. metre of the area of the land.

2. The grievance of the petitioner is that though the population of village Jesalpur is below 5,000, it has been included in Class "C" by the Taluka Development Officer, Chanasma and clubbed it with Chanasma town by the impugned notification.

3. Besides the contentions urged in Special Civil Application No. 583 of 1978 and other companion matters, the petitioner has specifically raised a point that the impugned notification was ultra vires the power of the assessing authority under the impugned rules inasmuch as the impugned rules have prescribed what are the different classes of cities, towns and villages and the competent assessing officer, namely, the Collector has no power or authority to include any city, town or village in any manner contrary to the prescription of the rules.

4. We are of the opinion that this petition deserves to be allowed on the short ground that the impugned notification insofar as it included village Jesalpur in Class "C" alongwith town Chanasma, it was beyond the power or authority of the competent authority under the rules. It should be recalled that cities and towns with population of more than 10,000 and upto 50,000 inclusive of population of the areas falling under Clause II of Class "B" within those cities and towns are included in Class "C". Jesalpur is admittedly a village and not a city or town. Apart from that, it could not have been included in the peripheral area of one kilometre adjoining the town of Chanasma and therefore, could not have been justifiably included in Class "C". According to the petitioner, Jesalpur is situate at a distance of more than one kilometre from the town of Chanasma and is distinct and separate entity for all purposes. The land in question of Section No. 54 of the revenue limits of Jesalpur is more than two kilometres away from Chanasma and according to the petitioner, it could not be included in the peripheral area as has been sought to be done by the impugned notification. We are of the opinion that prima facie the Taluka Development Officer could not have issued the impugned notification since the power of dividing villages, towns and cities is vested in the Collector and he could have classified the villages, towns and cities of the district according to the prescription of Rule 81(1) of the impugned Amendment Rules of 1977. It is also necessary for the Collector to determine what are the areas adjoining such villages, towns and cities which can be included in Clauses I, II and III as peripheral areas as prescribed in Rule 81(1)(b) of the impugned rules. If, therefore, village Jesalpur is beyond one kilometre of Chanasma town, it could not have been included within Clause III. It should be noted that it is only the area adjoining the villages, towns and cities that can be classified as peripheral area of Clauses I, II and III. It is doubtful whether the entire village can be included in the peripheral area and categorised as Clauses I, II, and III though we are not expressing any final opinion over it. In any view of the matter, even the Collector could not have exercised that power of classification de hors the prescription of Rule 81(1). We are, therefore, of the opinion that the impugned notification is beyond the authority, jurisdiction or power of the Taluka Development Officer and, therefore, must be quashed and set aside. The demand raised by the notice of recovery dated 15th May 1980 Annexure "A" to the petition should also be consequently quashed and set aside.

4.1. The result is that this petition is allowed. The impugned notification is quashed and set aside and the notice of demand Annexure "A" is also quashed and set aside.

5. The petitioner who has paid the non-agricultural assessment according to the notice of recovery quashed and set aside by this order should be refunded the same within four weeks from to-day. The Collector shall be at liberty to properly classify village Jesalpur according to the prescription of the relevant rule after giving an opportunity to the petitioner in that behalf. Rule is made absolute accordingly with no order as to costs.