

(1965) 09 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No's. 672 of 1963 and 1934 of 1964

Rajashekar

APPELLANT

Vs

State of Mysore and Others

RESPONDENT

Date of Decision : 30-09-1965

Acts Referred:

Constitution of India, 1950 — Article 14, 265
Hyderabad Land Revenue Act, 1317F — Section 172
Hyderabad Land Revenue Rules — Rule 71

Citation : AIR 1966 Kar 304

Hon'ble Judges : K.S. Hegde, J;C. Honniah, J

Bench : Division Bench

Judgement

This Judgment has been overruled by : State of Mysore Vs. Associate Cement Companies Ltd. and Another, (1984) 1 SCALE 628 : (1984) 1 SCC 430 Supp : (1984) SCC 430 Supp : (1984) 16 UJ 439

Hegde, J.

(1) Common questions of law arise for decision in these petitions. Hence, they may be conveniently dealt with in one Order.

(2) In these petitions, the validity of special assessments made under R. 71 of the Hyderabad Land Revenue Rules (to be hereinafter referred to as the "Rules") framed under S. 172 of the Hyderabad Land Revenue Act (to be hereinafter referred to as the "Act") is called into question.

(3) The petitioner in W.P. No. 672/63 is the owner of two plots measuring 200" x 200" in Plot Nos. 1 and 2 in S. No. 33(Khasra Nos. 59 and 60). In Raichur Town That land was originally a tank bed parampok. It was acquired by the Raichur Municipality in the year 1931 for the purpose of establishing a grain and cotton market. But later, the Municipality found that land was not suitable for that purpose. Therefore, it decided to use it for industrial development as per the Master Plan prepared for Raichur Town. The Municipality accordingly carved out

several plots in that land and sold them by public auction in the year 1939. The petitioner purchased two of those plots measuring 200 feet by 200 feet for industrial purpose. Thereafter, he put up a Ginning Factory in those plots. The land in question is within the municipal limits. The petitioner was regularly paying municipal taxes in respect of those plots. In the year 1958, for the first time, special assessment was levied in respect of those plots on the basis of Rule 71 as in force then. The special assessment levied in that year was about Rs.30 rule 71 as it then stood read as follows:

"(1) In the event of diversion of dry agricultural lands to non-agricultural purposes, the following special assessment shall be levied:

(a) Rs. 5 per acre in the case of land situated in the village other than the Tahsil or District Head-quarters

(b) Rs. 8 per acre in the case of land situated in the Tahsil head quarters.

(c) Rs.12 per acre in the case of land situated in the District Head Quarters.

Provided where such land is situated within the municipal limits of a village having a population of 15,000 or more, the Collector may levy an assessment of Rs. 15 per acre.

(2) In the event of wet land being diverted to non-agricultural purposes the rate of special assessment shall be 1 1/4 times of the net assessment, if the land is situated in a village other than Tahsil or District head quarters and 1 1/2 times. If the land is situated in the Tahsil or District Headquarters.

Explanation

(a) for the purpose of the Rule, lands lying within six miles of the municipal limits of the cities of Hyderabad and Secunderabad shall be deemed to be lands situated in the District Headquarters.

(b) Where the area diverted to non-agricultural purposes has been demarcated by trenching or fencing or by raising a wall only such area shall be subject to special assessment. Where no such demarcation has been made, the whole survey number, of which the area forms a part, shall be charged special assessment."

(4) The above Rule was amended as per the Mysore Government Notification No. RD. 36 LBA 57 dated 4-7-1958. The amended Rule reads as follows:

"71(1). Mode of assessment in the case of diversion of agricultural lands to non-agricultural purposes, the special assessment shall be levied as follows:

(a) in the case of land situated in any village the population of which does not exceed 5,000 the rate of special assessment leviable shall be not less than the agricultural assessment leviable on such land and not more than Rs. 40 per acre.

(b) in the case of land situated in any village or town other than a town coming

under sub-rule (c) of this rule, the population of which exceeds 5,000 the rate of special assessment leviable shall be not less than Rs. 40 per acre and not more than Rs. 80 per acre.

(c) in the case of land situated within an area comprising the Municipality limits of the town of Raichur, Gulbarga and Bidar the rate of special assessment leviable shall be not less than Rs. 150 per acre and not more than Rs. 250 per acre.

2. Special Assessment will be levied at uniform rates for the entire extent converted for non-agricultural purposes irrespective of the extent actually build upon.

3. Where unalienated land assessed or held for purposes of agriculture is subsequently used without permission for any other purpose, the rate of special assessment leviable shall be one and one fourth of the rates specified under sub-rule (1)".

(5) For the years 1959 1960, 1961 and 1962 special assessment was levied on the plots in question as per the amended Rule.

(6) On the basis of those assessments, the Tahsildar of Raichur issued a Notice of Demand on 7-3-1963. That notice reads as follows:

"No..... Taluka

Taluk Officer Date:

Sl. No. 387/7-3-1963

Notice

Subject: Recovery of arrears Thakavi / Land Revenue

To

Sri Athanoor Sakrappa,

S/o..... resident of Raichur

You are hereby informed through this notice that you have to pay the special arrears for the year 1958 to 62 amounting to Rs (2500) in words plus 0-50nP notice fees. Therefore, you are hereby called upon to pay the full amount within 7 days from the receipt of this notice and obtain a receipt. Otherwise after the expiration of the due date, action will be taken to recover the full amount after attachment of your properties. One copy has to be returned after the signature.

Sd/-

Tahsildar"

6-3.

Athanoor Sakrappa mentioned therein is the father of the petitioner. He is dead.

(7) In W.P. No. 672/63 the petitioner challenges the validity of the said demand. Therein the contentions raised are:

(1) The "Act" does not provide for any levy of special assessment; therefore Rule 71 is ultra vires of the "Act".

(2) The lands in question are Municipal lands; hence no assessment can be levied on the same in view of S. 48 of the "Act".

(3) The rate of special assessment provided under Rule 71 is arbitrary and unreasonable: therefore, the Rule in question is bad.

(4) Section 48 of the "Act" provides that the land revenue should be levied and collected in accordance with the provisions of Chapters IV, VIII and IX of the "Act". There is no provision in those chapters providing for the levy of special assessment. Hence the levy in question is not authorised by law.

(5) Even since 1939, the plots in question have been used for non-agricultural purposes. Therefore, in 1958 the Government had no authority to levy special assessment on its use for non-agricultural purposes.

(6) Under any circumstance, the municipality alone can be held responsible for the payment of special assessment and lastly.

(7) Lands which are within the Municipal limits are not liable to pay special assessment.

(8) The principle in W.P. No. 1934 of 1964 owns a Ginning Factory at Raichur. That factory was started more than 50 years back. On 9-7-1964 the Tahsildar of Raichur served upon him a notice demanding payment of Rs. 26,593.80 as special assessment in respect of the factory and the lands attached to it. The notice in question reads as follows:

GOVERNMENT OF MYSORE

Office of the Tahsildar, Raichur

Raichur, dated 9th July 1964.

No. DCB/780/64-65

DEMAND NOTICE

M/s Volkart Brothers, Ginning Factory, Raichur

Subject: Recovery of arrears of special assessment for the year 1958/59 to 1961-62.

Take notice that a sum of Rs. 26,593-80 is due from the Agricultural years 1958/59 to 1961/62 at the rate of Rs. 6,643-45 on the Agricultural lands of following description for their use of un-non-agricultural purposes.

Village Kh. No. Sy. No A Guntas C R E Amount of special assessment Charged

1 2 3 4 5

Raichur 2372 1503/1 1-14

" 2373 1503/2 1-32

" 2374 1504/1 3-06

" and 2 0-10

" 2375 1505/1 3-22

" 2378 1506/ 4-03

" 2379 1507/1 2-24

" 2380 1507/2 0-01

" 2381 1507/3 0-03

" 2383 1509/1 1-18

" 2384 1509/2 0-07

" 2385 1509/3 0-06

" 2386 1510/1 1-13

" 2387 1510/2 0-01

" 2388 1510/3 0-02

" 2389 1510/1 0-35

" 2390 1511/2 0-15

Total 21-11 6,648-45

Rs. 6,648.45 nP has been worked out at the rate of Rs. 312-50 paise per acre on the entire area of 21-11 as described above. This revised rate of special assessment has come into force from the year 1958-59 by an amendment to Rule 71 of the Hyderabad Land Revenue Rules, 1951.

You are hereby required to pay the entire sum within (15)days of receipt of this notice.

Sd/-

Tahsildar, Raichur

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NB: In case the present occupants are not the assesseees or their legal representatives, their correct address may be furnished for transmission of their notice. It may further be stated since when the present occupants are in

possession of the lands."

The levy in question was made under R.71 referred to earlier.

(9) The petitioner's contentions are:

(1) Section 172(2)(e) of the "Act" on the basis of which Rule 71 had been framed, amounts to excessive delegation of legislative power and therefore it is ultra vires of Art. 245 of the Constitution. Hence that provision is liable to be struck down.

(2) Rule 71 itself is bad as the levy made thereunder is not authorised by law. Hence the rule is violative of Article 265 of the Constitution.

(3) As the said Rule confers arbitrary powers on the assessing authority to levy special assessment at different rates on different lands the said rule is violative of Art. 14 of the Constitution.

(4) The power conferred under R. 71 being a quasi judicial power the Rule Making Authority should have laid down the manner of its exercise. The rule not having regulated the manner of its exercise the rule is bad and.

(5) The impugned levy was made without giving the petitioner an opportunity to represent his case; further the order of assessment is not supported by reasons and hence the assessing authority must be held to have exercised its power illegally.

(10) The petitioner in W.P. No. 1934 of 1964 further complains that special assessment was levied on it on the basis that its factory site includes 25 acres and 80 guntas of land, whereas according to him, it comprises only of 16 acres and 3 guntas of land. It says that originally there were 21 acres and 3 guntas of land in that site, but 5 acres out of the same were compulsorily acquired by the Government in the year 1943. It's grievance is that even this elementary fact was not noticed by the assessing authority. We shall not proceed to consider the several contentions raised in these writ petitions.

(11) It is true that there is no specific provision in the "Act" providing for the levy of special assessment. But, special assessment is nothing but a levy of land revenue. "Land revenue" is defined for thus in S. 2(17) of the "Act":

"Land revenue" means the amount paid by the land-holder to the Government and in the case of non-khalsa land to the Jagirdas at fixed period for the use or occupation of the land."

"Revenue" means the amount payable by the holder to the Government at fixed periods for use of or entry into the land."

In view of these definitions the special assessment mentioned in R. 71 must be considered as "land revenue". Section 50 of the "Act" provides that land revenue shall be assessed according to the various modes of use, namely, (a) agricultural use, and (b) in addition to agricultural use any other use from which profit or

advantage is derived. So far as the levy of land revenue on lands used for agricultural purposes are concerned there are elaborate provisions in the "Act". But in the case of levy of assessment on lands used for non-agricultural purposes, there are no special provisions in the "Act". All that is provided in S. 50 is that the land revenue shall be assessed according to the various modes of use, one of which being its use for non-agricultural purposes.

(12) Section 172(2)(e) confers power on the Government to frame rules as regards the levy for assessment of the land revenue etc. This power is a very wide power. It certainly includes power to make rules providing for levy of land revenue on the non-agricultural use of lands. Hence we see no force in the contention that the "Act" does not make any provision for levy of special assessment.

(13) In our opinion, the petitioners can seek no support from S.48 of the "Act". That section reads:

"All lands, whether applied to agricultural or any other purpose and wherever situate shall be liable to payment of land revenue to the Government in accordance with the provisions of this Chapter and Chapters VII and IX except in case title to land has been transferred to any municipality or the revenue thereof has been wholly remitted under any special contract with Government or under any order or law."

That section merely exempts municipal lands from land revenue. The fact that S. No. 33 was at one time municipal land is no ground for the petitioner in W.P. No.672/63 to claim exemption from land revenue. It is not the law, that once a land is a municipal land, it can never be assessed to land revenue, even though the title to the same has been transferred to some one else.

(14) The power to levy tax is a very wide power. The fact the levy impugned is a burdensome one by itself cannot make the levy an unlawful levy. It is not for this Court to consider what tax is a reasonable tax. That is the function of the legislature. Therefore, there is no substance in the contention that R. 71 is bad as the levy made thereunder is burdensome.

(15) There is also no merit in the contention that as the levy in question does not fall within the scope of the provisions contained in Chapters IV, VII and IX of the "Act" and hence the same is impermissible in view of S. 48. As seen earlier, S. 50 specifically provides for the levy of land revenue for lands used for non-agricultural purposes.

(16) The contention that the land in question had been converted as long back as 1939 and therefore no levy of special assessment can be made in the years 1958 to 1962, is an untenable one. The levy in question is not a levy on the conversion of the land for non-agricultural purposes. It is a recurring levy for the use of the land for non-agricultural purposes.

(17) The contention that the municipality is liable to pay the special assessment

in question has no merit in it. The municipality is not the present owner of the land. It has no interest in that land.

(18) We see no force in the contention that the lands lying within municipal limits are not liable to pay special assessment. No provision of law in support of that contention was brought to our notice.

(19) The contention that S. 172(2)(e) of the "Act" is an unconstitutional provision deserves serious consideration. It was urged on behalf of the petitioners that that provision delegates to the Rule Making Authority essential power of legislation and hence invalid. It was said that the legislature cannot delegate to any subordinate authority its function of laying down legislative policy in respect of a mesne and its formulation as a rule of conduct: it is the duty of the legislature to declare the policy of the law and the legal principles which are to control any given case; further, the law made must provide a standard to guide the officials or the body in power to execute the law. The essential legislative function, it was urged, consists in the determination of choice of the legislative policy and of formally enacting that policy into a binding rule of conduct. In support of these contentions strong reliance was placed on the decisions of the Supreme Court in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, .

Dealing with the provision in question, it was urged that in the matter of levying land revenue on non-agricultural uses of land the legislature had failed to lay down its legislature policy or to formulate the same as a rule of conduct; further it has also failed to lay down the legal principles providing a standard to guide the officials who are to execute the law. The grievance of the petitioners was that the legislature had neither fixed the levy nor laid down the principles on the basis of which the levy is to be made. We were told that in whatever way we may read the "Act", it would not be possible to discern any principle on the basis of which the land revenue in question is to be levied. It was further urged that the rate of tax to be levied is essentially a question of legislative policy; it does not fall within the region of subsidiary legislation; the legislature has not stipulated either the minimum rate or the maximum rate; it had completely abdicated its power in favour of the Government and hence the power conferred on the Government under S. 172(2)(e) must be struck down.

(20) At first sight, the arguments advanced on behalf of the petitioners, appear to be attractive. But on a closer examination it will be found that they are not tenable. The legislature has laid down its policy of levying land revenue on the non-agricultural uses of the land in S. 50 of the "Act". What has been left to the Rule Making Authority is quantum of the levy and the manner of imposing it. In the very nature of things, it is well-nigh impossible for the legislature to fix the land revenue payable by various types of lands. It is not even possible to fix the land revenue payable by various types of lands. It is not even possible to fix the maximum and the minimum rates. The rate is likely to vary from place to place and from time to time. The value of the land or the income available varies from

place to place and from one piece to another. It is impossible to enumerate the various uses to which a land could be put. From the beginning of history land revenue is considered as the Government's share of income from land. It's nature and incidence is different from other taxes.

We have elaborately discussed the history of the land revenue in W.Ps. Nos. 1165 to 1168 and 1198, 1199 and 2619 of 1963 : AIR 1966 Mys 278 From the discussion, it is seen that the land revenue is placed in a category different from other taxes. In the past, the levy of land revenue was considered as a prerogative of the Crown. It was levied in lieu of Crown's share of the income from land. In the past, it was leviable by the executive even without any legislative sanction as could be seen from a line of decisions i.e. Bell v. Municipal Commissioner for the City of Madras ILR (1902) Mad 457; Madathapu Ramayya v. Secretary of State. ILR (1904) Mad 386 : Echikan Charakare Kelu Nair Vs. The Secretary of State for India in Council, and Bala Surya Prasada Row v. Secretary of State ILR Mad 886 : AIR 1917 PC 42.

(21) In considering the validity of a decision, the Courts cannot be unmindful of the various practical difficulties and the past history and practices in that regard. Under modern conditions, particularly in democracies where the Cabinet system of Government prevails the dividing line between the legislative and executive powers is getting blurred. The contention that the rate at which a tax should be levied is an essential legislative policy and the same is incapable of being delegated is no more available in view of the decision of the Supreme Court in Corporation of Calcutta and Another Vs. Liberty Cinema, .

(22) For ILR the above reasons, we are unable to agree with the contention that S. 172(2)(e) of the "Act" is an invalid provision.

(23) It was next contended that the power conferred on the Deputy Commissioner under Rule 71 is a highly arbitrary power; it is capable of being used in a discretionary manner there is a wide gulf between these rates, he is given full power to fix in respect of any land such rate as he considered power; no principles are laid down in the rule to guide him in the exercise of his powers; he is not required to hear the concerned parties or to give reasons in support of his conclusion; hence, the Rule in question should be struck down as being violative of Art. 14 of the Constitution.

(24) It is true that Rule 71 allows a wide margin to the Deputy Commissioner in the matter of determining the special assessment to be levied on lands used for non-agricultural purposes. It is also true that those Rules do not regulate the exercise of that power. The Rules also do not require him to hear the concerned parties before determining the assessment. He is also not required to give any reasons in support of his order. But, this order is made appealable under S.158 of the "Act". Before pronouncing on the question whether the power conferred on the Deputy Commissioner under R. 71 is an arbitrary power or not, we have to first examine the nature of that power. We have to see whether the power

conferred under R. 71 is an administrative power the same being unguided and uncontrolled and capable of being discriminatively used has to be held to be violative of Art. 44 of the Constitution.

In the very nature of things, the Deputy Commissioner himself cannot fix the special assessment in respect of any land. He has to a very large extent depend on his subordinates, some of whom may not be holding high positions. If the Deputy Commissioner has to act on his subjective satisfaction then it is obvious that arbitration is writ large on the fact of the power conferred. But if on the other hand the power conferred under R. 71 is a quasi judicial power, the same has to be exercised on the basis of some rational and objective standard or standards. The standard adopted must be uniform in respect of similar lands. Further, the Deputy Commissioner has to exercise his powers in accordance with the principles of natural justice which in the context of these cases mean that the party likely to be affected should be given an opportunity to represent his case, grounds urged by him should be considered and the decision rendered should be supported by reasons. If all these requirements can be fulfilled, the complaint or arbitrariness would disappear and the possibility of discrimination would be guarded against. As seen earlier, the person assessed has a right of appeal.

(25) It was contended by the learned Advocate-General that in determining the assessment due from any land, the Deputy Commissioner is discharging only an administrative function and his function in that regard cannot be considered either as judicial or as quasi-judicial. In that connection, he invited our attention to Rules 13, 14 and 14-A in Ch. III of the Rules and Rules 80 to 85 in Chapter V of those Rules. We do not think that those Rules are of much assistance in determining the nature of the power of the Deputy Commissioner. A function which is administrative at one stage can assume the character of a judicial function at a later stage. The fact that the Deputy Commissioner is required to discharge several administrative functions in the matter of levying assessment or non-agricultural lands by itself is not a conclusive test in finding out the nature of his power to levy land revenue.

(26) In support of the contention that the power in question is a judicial power, the learned counsel for the petitioners placed strong reliance on the decision of the Supreme Court in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, . In para 9 of that judgment, the learned Chief Justice speaking for the Court observed thus:

"The Act (Travancore Cochin Land Tax Act, 1955, as amended by Act 10 of 1957) merely declares the competence of the Government to make a provisional assessment and by virtue of S. 3 of the Madras Revenue Recovery Act, 1964, the land-holders may be liable to pay the tax. The Act being silent as to the machinery and procedure to be followed in making the assessment leaves it to the Executive to evolve the requisite machinery and procedure. The whole thing from beginning to end is treated as of a purely administrative character completely ignoring the legal position that the assessment of a tax on person or

property is at least of a quasi judicial character"

The Act impugned before the Supreme Court dealt with the levy of land revenue. Therein, a basic land revenue of Rs. 2 per acre was levied on all lands irrespective of their productivity. It is the validity of that levy that came up for consideration before their Lordships. In the ` before us, as seen earlier, power is conferred on the Deputy Commissioner by R. 71 to levy land revenue on all non-agricultural lands at varying rates. It is for him to fix the rate in respect of any particular land, no doubt within the limits laid down in R. 71. In these circumstances, the power conferred on him must be considered as a judicial power at any rate a quasi-judicial power. Ordinarily, a tax on land or land revenue is assessed on the actual or potential productivity of the land sought to be taxed. The only other alternative basis is the value of the land concerned.

Rule 71 does not lay down as to the basis to be adopted by the Deputy Commissioner in levying land revenue. Even if we assume that the Deputy Commissioner are bound to adopt one of the two basis mentioned above, there is no certainty and in fact it is most unlikely that all the Deputy Commissioners in the State would adopt a common basis. There is every likelihood of some Deputy Commissioner in the State would adopt a common basis. There is every likelihood of some Deputy Commissioners adopting the capital value basis while others proceeding on the basis of productivity actual or potential. Hence the rate of special assessment for similar lands may differ from District to District. That would be violative of Article 14 of our Constitution.

(27) For the reasons mentioned above, we are of the opinion that Rule 71 is violative of Art. 14 and hence void.

(28) In the result, these Writ Petitions are allowed and impugned demands quashed. The petitioners are entitled to their costs from the State of Mysore. Advocate's fee Rs. 100.

(29) Petitions allowed