

(1957) 03 BOM CK 0044

In the Bombay High Court

Case No : Special Civil Application No. 3255 of 1956

Rangildas Varajdas Khandwala

APPELLANT

Vs

The Collector of Surat and Another

RESPONDENT

Date of Decision : 05-03-1957

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 134, 37, 45, 48, 52
Bombay Personal Inams Abolition Act, 1952 — Section 4, 5, 5(1), 7

Citation : AIR 1957 Bom 270 : (1957) 59 BOMLR 527

Hon'ble Judges : Tendolkar, J;Dixit, J

Bench : Division Bench

Advocate : Ranchhoddas and Co. Attorneys, D. Padhye, K. Koticha, N.C. Shah, for the Appellant; Y.V. Chandrachud, Asst. Govt. Pleader, for the Respondent

Judgement

Tendolkar, J.—This is a petition which raises the question of the assessability to land revenue of certain lands which belonged to the petitioner who was an inamdar. Part of his inam lands consisted of survey No. 6 measuring 4 acres 8 gunthas in the village of Athwar, Taluka Choraisi. The village was included in the limits of Surat City, and in the City survey carried on in 1924-25 the said land came to bear City Survey No. 60 Ward No. 13 of the City of Surat. Inam of the said land was recognised under the Bombay Summary, Settlement Act, 1863, and on the 21st of April, 1879 a Sanad was issued by the Secretary of State-in-Council under the signature of; the Collector of Surat in which it is stated that the said land is the private property of the Inamdar. In the Register of Alienated Villages and Lands maintained u/s 53 of the Bombay Land Revenue Code, the land has been described as permanent (enfranchised private property) subject to payment of Rs. 7/- as Salami and Rs. 6737-as emit rent, full assessment for the use of the land being Rs. 56/8/-. Now, it appears that in November, 1952 the City Survey Officer of Surat wanted to levy non-agricultural assessment on this land u/s 134 of the Bombay Land Revenue Code, as admittedly there had been erected on this land a costly bungalow which, according to the petitioner, had cost over a lakh to rupees. The petitioner carried on correspondence in

connection with the proposed levy of non-agricultural assessment, and as a result of this or response an intimation was sent to him on the 22nd of September 1954 by the Collector to Surat that the property was not liable to assessment u/s 134; but the Collector proceeded to add: ".....also note that your said survey No. property being "Inam land" and getting abolished under Bombay Personal Inam Abolition Act, you will be liable to pay non-agricultural assessment from 1-8-55" in the interval, the Bombay Personal inams Abolition Act, 1952, had been passed and the appointed date under the said Act was the 1st of August 1955, which is the date mentioned by the Collector of Surat. The petitioner thereupon made an application to the Collector of Surat dated the 27th of June 1955 praying that the Collector should be pleased to Issue Orders that no non-agricultural assessment should be levied on this property. On this petition the Collector made an order on the 28th of July 1955 holding that the land was liable to assessment and ordered that the property should be assessed as non-agricultural u/s 52 of the Land Revenue Code read with Land Revenue Rule 80-B from the date of coming into force of the Bombay Personal Inams Abolition Act, 1952. Against this decision of the Collector the petitioner appealed to the Bombay Revenue Tribunal, and the Tribunal upheld the decision of the Collector; and hence this petition.

2. Now, the main argument advanced by Mr. Padhye on this petition is that, on a true construction of the provisions of the Bombay Personal inams Abolition Act, 1952, the land used for building or other non-agricultural purpose does not become liable to assessment at all after the abolition of the inams; and, secondly, that if it is liable to assessment at all, it is not liable in any event, to non-agricultural assessment. It is necessary, therefore, to consider the relevant provisions of the Bombay Personal Inams Abolition Act, 1952. But before doing so, I may mention that the constitutionality of the Act was challenged on this petition; but since a Division Bench of this Court has already held that the Act, is valid, it is unnecessary for us to consider the question of constitutionality of the Act, and we have not allowed Mr. Padhye to reargue it before us.

3. Turning now to the relevant provisions of the Act, Section 4 enacts, in so far as it is relevant, as follows:

".....with effect from and on the appointed date.-

(i) all personal inams shall be deemed to have been extinguished,

(ii) save as expressly provided by or under the provisions of this Act, all rights" legally subsisting on the said date in respect of such personal inams shall be deemed to have been extinguished."

There is no doubt or ambiguity about the language employed in Section 4 of this Act and it is clear that not only are all personal inams extinguished, but all rights which were subsisting in respect of such personal inams were also extinguished; so that any privileges that an inamdar enjoyed in respect of an inam village or land ceased to be available to him from the appointed date under the Bombay

Personal Inams Abolition Act, 1952. Having indicated this, the Legislature proceeds in Section 5 to provide that the inam villages or inam lands shall be liable to payment of land revenue. Sub-section (1) states:

"All inam villages or inam lands are and shall be liable to the payment of land revenue in accordance with the provisions of the Code and the rules made thereunder and the provisions of the Code and the rules relating to unalienated lands shall apply to such-lands." In thus subjecting inam villages and lands to land revenue and applying thereto the rules relating to unalienated lands, the Legislature in effect provided that what were at one time inam villages or inam lands shall be treated for the purposes of land revenue as unalienated lands after the appointed date under the Bombay Personal Inams Abolition Act, 1952; and of course the liability to assessment shall have to be determined - by applying the relevant provisions of the Bombay Land Revenue Code, 1879. Having made these provisions in Sections. 4 and 5, the Legislature proceeded in Section 7 to take out of the operation of these two sections certain public roads, lanes, etc. and all uncultivated lands, and vest them in the State Government. Now, this provision is in terms comparable to the provision in Section 37 of the Bombay Land Revenue Code, 1879, whereby all public roads, etc., and all lands which are not the property of others are declared to be the property of the Government. That position was made to apply to similar lands which were originally situated in Inam villages or were amongst inam lands, and to that extent the law relating to non-inam lands was assimilated with the law relating to lands which had ceased to be inam lands. The effect of Section 7, therefore, was that the lands enumerated in Section 7 became vested in Government and were deemed to be the property of the State Govt.; and, of course the question of their liability to assessment under the Land Revenue Code would not survive. But in enumerating what "lands became vested in Government and were to be deemed to be the property of the State Government, one of the items enumerated was "all uncultivated lands". If the matter was left there, uncultivated lands would include lands on which a building had been put up or which had been converted to non-agricultural use; but as apparently the Legislature desired that such lands, although uncultivated, should not vest in the State Government, or be deemed to be the property of the State Government, such" lands were excluded from "all uncultivated lands" by including in brackets after the words "all uncultivated lands" the following words; "excluding lands used for building or other non-agricultural purposes". The effect of the exclusion is nothing more or less than that the lands so excluded remained subject to the provisions of Section 5. Therefore, on a reading of Sections 4, 5 and 7 together, there; can be little doubt that the lands with which we are concerned, which are lands used for building or other non-agricultural purposes, are liable to assessment under the Land Revenue Code. But Mr. Padhye has urged that the enumeration of "lands used for building or other non-agricultural purposes" as an exclusion from the operative part of Section 7 creates an exception to the liability to assessment provided for by Section 5 Sub-section (1). I find it extremely difficult to uphold

any such contention. Section 5 and Section 7 do not deal with the same subject-matter at all. The ambit of Section 5, Sub-section (1) is the liability of an inam "village or inam land to payment of land revenue, while the ambit of Section 7 is to take away certain well-defined lands out of inam lands and inam villages and to vest them in Government and to provide that they shall be deemed to be the property of the State Government. The enumeration of "lands used for building or other non-agricultural purposes"" is undoubtedly in terms an exception to Section 7 and by no stretch of imagination can that be deemed to be an exception to Section 5. In other words, all that happens by reason of the exclusion of such lands from the operation of Section 7 is that they do not vest in the State Government, but they remain liable, as other inam lands and inam villages do, to assessment to land revenue.

4. Then Mr. Padhye also advanced an argument that in respect of land which does not vest in Government no revenue can be charged or is chargeable. He has not pointed out any provisions of any law on which this argument is based. except of course that he wished to go into the history of land tenures in India and the enactment of the Revenue Codes to point out that it is in respect of unalienated lands only that land revenue was chargeable. Now, it seems to me to be a mistake to confound vesting in Government with unalienated lands. It is true that land revenue is chargeable in respect of unalienated lands and therefore, the provision of Section 5, Sub-section (1) of the Bombay Personal Inams Abolition Act in terms is that, on the abolition of the Inams and the rights in respect of such Inams, the inam villages or inam lands shall be "liable to payment of land revenue, and that the rules relating to unalienated lands will apply to such assessment. The fact, therefore, that the lands in question, which have a building on them or which are used for non-agricultural purposes, are not vested in the State Government has, in my opinion, no relevance to the question as to whether they are liable to assessment under the Land Revenue Code. They are in terms to be assessed according to the rules relating to unalienated lands in the Land Revenue Code. Therefore, in my opinion, the contention of Mr. Padhye that these lands are not liable to assessment at all cannot be upheld,

5. I next come to the contention that, in any event, the lands are not liable to non-agricultural assessment. This contention is based on a submission that non-agricultural assessment is leviable only when land assessed to agricultural assessment are converted to non-agricultural use and not otherwise; and for this purpose Mr. Padhye relies on Sections. 65, 68 and 67 of the Bombay Land Revenue code, 1879. Section 65 provides the procedure to be followed if an occupant of land wishes to convert agricultural user into non-agricultural user. An application is to be presented to the Collector, and if the Collector permits such conversion of user, the section provides that the Collector may require the payment of a fine in addition to any new assessment which may be "leviable under the provisions of Section 48 of the Code. Section 66 provides for a penalty for converting agricultural lands to non-agricultural use without obtaining the permission of the Collector and Section 67 provides that permission may be

granted on such terms as may be prescribed by the Collector subject to any rules made by the State Government. Now, there is no doubt from these sections that, where lands which have been assessed to agricultural assessment are sought to be put to a non-agricultural use with the permission of the Collector, they attract non-agricultural Assessment, but this does not answer the question as to whether lands which at the date when the Code became applicable to such lands, had a building on them or were being put to non-agricultural use are to be subjected to non-agricultural assessment or only to" agricultural assessment. Now, the, charging section under the Code is Section 45, which provides that all land is liable to payment of land revenue and the section in terms says that the liability exists whether the land is applied to agricultural or other purposes; so that it is explicit in Section 45 that lands used for non-agricultural purposes are as much liable to payment of land revenue as other lands.

6. We next turn to Section 48 and this section provides that the land revenue leviable shall be assessed with reference to the use of the land and the three uses enumerated in the section are: (a) for the purpose of agriculture; (b) -for the purpose of building; and (c) for a purpose other than agriculture or building. For the purpose of non-agricultural assessment, (b) and (c) both fall within its scope except that the rates of non-agricultural assessment for land used for the purpose of building is different under the rules from land used for a purpose other than building. Therefore, when land which is liable to assessment u/s 45 is actually assessed, it will attract assessment according to Its user at the time when the assessment is sought to be levied. If it is for the purpose of agriculture, it will attract the appropriate agricultural assessment. If it is for a Purpose other than agriculture, it will attract the assessment appropriate to a building or to other non-agricultural use under the Rules 10 is worth noticing in this context that Section 65 itself provides that, where lands assessed to agricultural assessment are permitted to be put to non-agricultural use by the Collector, the occupant shall be liable, in addition to any fine that may be-imposed, to any new assessment leviable under the provisions-of Section 48. Therefore, the right to levy non-agricultural assessment does not arise out of Section 65 but the right to levy it is to be found in Section 48 and occasion for its use in the case of land converted from agricultural use to non-agricultural use arises only when the requisite permission u/s 65 is granted by the Collector. But where at the date when the Code was made applicable to any land, the land was being used for a purpose other than agriculture, it seems to me to be clear that under the provisions of Section 48 it has to be assessed according to the appropriate rate in that regard provided in the Land Revenue Rules. Rules 13 onwards provide for the survey and assessment of non-agricultural lands; and Chapter XIV deals with the imposition and revision of non-agricultural assessment. Rule 80-B, which is the appropriate rule in this context, is in these terms ;

"When land which is held or used for any non-agricultural purpose is assessed under the provisions of Section 52, such assessment shall be fixed and revised by the Collector from time to time in accordance with the rules contained in this

Chapter."

The following rules prescribe the ordinary rates of non-agricultural assessment with which we are not concerned on this petition.

7. Therefore, it appears to me that the true position in law is that where at the date when the Code is made applicable land is used for a non-agricultural purpose, it" attracts "the appropriate non-agricultural assessment when it is first assessed under the Code, it is only when a land first assessed to agricultural assessment is sought to be converted to a non-agricultural use that the provisions of Sections. 65, 66 and 67 have any application. In my opinion, therefore, the land not only is liable to assessment, but was rightly held" to be liable to non-agricultural assessment.

8. In this connection, Mr. Padhye also advanced another argument which is said to arise out of a correct construction of Section 4 Sub-section (ii) of the Bombay Personal Inams Abolition Act, 1952. That sub-section as I have previously indicated, extinguishes all rights legally subsisting in respect of inams on the appointed date. Now, the contention of Mr, Padhye is that erecting a building on the inam lands was a right of the Inamdar in respect of his personal inam; that right was exercised by him at the time when he put up a building on the land very many years ago; the right was not subsisting at the appointed date; and therefore, it could not be extinguished under the provisions of Section 4, Sub-section (ii) of the Bombay Personal Inams Abolition Act, 1952. It may be Debatable as to whether erecting a building on a land is belonging to oneself is a peculiar right possessed by an inamdar or whether such a right can be said to be in respect of the personal inam, It is. I presume, a right of every owner of land to erect a building on his land, and there 13 no Particular privilege or right that an inamdar enjoys in that regard. But assuming for the purposes of this argument that this was a right in respect of a personal inam, it undoubtedly had been already exercised and nobody suggests that that right which had been exercised can be extinguished. What Mr. Padhye wishes to argue there from is that, when that right was exercised, the land was exempt from assessment! under the Land Revenue Code, and he argues that it, therefore, must continue to be exempt from liability to assessment after the appointed date. This argument postulates that the right of the inamdar to erect a building carried with it the right to exemption from revenue assessment in perpetuity. I find no warrant for any such assumption in law. So long" as the inamdar enjoyed the privileges that were conferred upon him by his sanad in respect Of his inam, he continued to be exempt from assessment to the extent) to which his sanad conferred such a benefit on him." when the inam was extinguished, the sanad ceased to be effective and the exemption that ho enjoyed automatically came to an end. There can, therefore, be no Question of the right to erect a building carrying with it the right to exemption from assessment in perpetuity; and, in my opinion, this argument of Mr. Padhye has far less substance in it than any of the other arguments advanced by him. _

9. Lastly, Mr. Padhye also argued that, up-on a true construction of Ss. 5 and 7 of the Bombay Personal Inams Abolition Act. 1952, Section 5 applies only to cultivated lands and Section 7 to uncultivated lands; or rather, uncultivated lands are excluded from the scope of Section 5 altogether. As I have pointed out earlier, the ambit of the two sections is entirely different. All lands included within the scope of section 5 are rendered liable to land revenue, while section 7 takes out of the operation of Section 5 such portions of inam lands and villages as are enumerated in that section and vests them in the State Government and provides that they shall be deemed to be the property of the State Government. There can, therefore, be no question of uncultivated lands not falling within the scope of Section 5 to the extent to which they are taken out by the operative part of Section 7. In other words, uncultivated lands on which there is a building or which are put to non-agricultural use are within the scope of Section 5 (1) and are liable to assessment.

10. The result, therefore, is that the petition must fail and will be dismissed with costs.

11. Petition dismissed.