(1937) 02 BOM CK 0022

In the Bombay High Court

Case No : Second Appeal No. 33 of 1933

The Secretary of State for India APPELLANT

Vs

Ganesh Narayan Gadgil RESPONDENT

Date of Decision : 25-02-1937

Acts Referred:
Bombay Land Revenue Code, 1879 — Section 66

Citation : AIR 1937 Bom 456 : (1937) 39 BOMLR 885

Hon'ble Judges : N.J. Wadia, J;John Beaumont, J

Bench : Division Bench

Final Decision : Allowed

Judgement

John Beaumont, Kt., C.J.—This is a second appeal from a decision of the District Judge of Thanes, which raises a short point of law under the Bombay Land Revenue Code of 1879. The present respondent is the occupant of certain land assessed for agricultural purposes. A trespasser entered upon the land without the knowledge or consent of the occupant, and quarried stones from the land, that is to say, he used the land for a non-agricultural purpose; and the question is whether such user by a trespasser subjects the occupant to liability to a fine u/ s 66 of the Bombay Land Revenue Code.

2. Section 65 of the Code provides that an occupant of land assessed or held for the purpose of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives to make certain improvements.

3. Then it provides that if any occupant wishes to use his holding or any part thereof for any other purpose, the Collector''s permission shall be applied for.

4. Then provision is made as to how the Collector''s permission is to be given, and the last paragraph provides that when any such land is thus permitted to be used for any purpose unconnected with agriculture, it shall be lawful for the Collector to require the payment of a fine in addition to any new assessment.

5. Then comes Section 66, which provides :?

If any such land [which, referring back to Section 64, means ''any land assessed or held for the purpose of agriculture''] be so used [which, again referring back to Section 65, means ''used for any purpose unconnected with agriculture''] without the permission of the Collector being first obtained, or before the expiry of the period prescribed by Section 65, the occupant and any tenant, or other person holding under or through him, shall be liable to be summarily evicted by the Collector from the land so used and from the entire field or survey number of which it may form a part, and the occupant shall also be liable to pay, in addition to the new assessment which may be leviable under the provisions of Section 48 for the period during which the said land has been so used, such fine as the Collector may, subject to the general orders of Government, direct.

6. Then there is a provision that?

Any tenant of any occupant or any other person holding under or through an occupant, who shall without the occupant''s consent use any such land for any such purpose, and thereby render the said occupant liable to the penalties aforesaid, shall be responsible to the said occupant in damages.

7. The trial Judge held that the use of the land for non-agricultural purposes by a trespasser subjected the occupant to a fine u/s 66; but the District Judge differed from that opinion, and held that Section 66 was confined to user of the land by the occupant or any of the persons referred to in the first paragraph of Section 65, i.e., servants, tenants, agents or other legal representatives. The learned District Judge extracted that meaning from the words "so used.? But I am quite unable to agree with him that the words "so used" import user by any particular class of persons. The Act does not say "so used by the persons mentioned in Section 65." It is no doubt true that u/s 66 the Collector has a right of eviction only against an occupant and any tenant or other person holding under or through him. The right of eviction does not apply to a trespasser. Of course a trespasser can always be evicted by the true owner, and it may be that the legislature thought it unnecessary to provide expressly for the eviction of a trespasser; but when one comes to the words imposing liability to a fine, they provide quite generally that an occupant shall be liable to fine. In my opinion the words of the section are quite clear, and an occupant is liable to fine if there is any user of his land for purposes other than agriculture, whether or not the occupant has consented to or has knowledge of such user. Mr. Chitale has also contended that the amount of the fine is in excess of that leviable under Rules 100 to 102 of the Land Revenue Rules, but that point was not taken in either of the Courts below, and if it had been, Government might have given evidence as to the circumstances which justified the imposition of the fine in question under Rule 102. In my opinion, therefore, we cannot allow any question to be raised as to the amount of the fine.

8. The appeal must be allowed with costs throughout.

N.J. Wadia, J.

9. Section 48 of the Bombay Land Revenue Code provides for the levy of altered assessment when land held for agricultural purposes is converted to a non-agricultural purpose, and the section makes no distinction between conversion of the land by the occupant or persons holding through or under him, or by trespassers without the knowledge or permission of the occupant.

10. Section 65 lays down the procedure to be followed by an occupant if he wishes to convert his land from an agricultural purpose to a non-agricultural purpose, and Section 66 provides for the penalties to which an occupant renders himself liable if land is unauthorizedly converted from an agricultural to a non-agricultural purpose. The latter section provides that when agricultural land is so used, i.e., for a purpose unconnected with agriculture, without the previous permission of the Collector being obtained, the occupant is liable to pay altered assessment and fine. There is nothing in the language of the section which justifies the view which the learned District Judge has taken that the liability to altered assessment and fine is incurred by the occupant only when the conversion is by himself or by a tenant or agent of his. To put such a restriction on the words of the section would defeat one of the principal objects of Section 48, since it would permit a conversion of land from agricultural to non-agricultural uses without giving Government the right to check such conversion by the levy of altered assessment and fine. Although the appeal to the District Court was against the levy of both altered assessment and fine in this case Mr. Chitale in the course of his argument conceded that Government were entitled to levy altered assessment from the occupant even though the conversion to non-agricultural purposes might have been made by a trespasser without the knowledge or consent of the occupant. The section, however, makes no distinction between the right to levy altered assessment and the right to levy fine. Both follow upon the conversion of the land from one use to another irrespective of whether the conversion has been made by the occupant or his tenants or agents or by somebody without the occupant''s consent. I agree, therefore, that the view taken by the District Judge is wrong, and that the appeal must be allowed.

