

**(1953) 10 BOM CK 0003**

**In the Bombay High Court**

**Case No :** Special Civil Application No. 932 of 1953

T.P. Kapadia and Another

APPELLANT

Vs

State of Bombay

RESPONDENT

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**Date of Decision :** 01-10-1953

**Acts Referred:**

Bombay Land Revenue Code, 1879 — Section 48, 48(2), 66

**Citation :** AIR 1954 Bom 270 : (1954) 56 BOMLR 143 : (1954) ILR (Bom) 595

**Hon'ble Judges :** Chagla, C.J.;Dixit, J

**Bench :** Division Bench

**Advocate :** R.A. Jahagirdar and N.M. Shanbhag, for the Appellant; V.S. Desai, for H.M. Choksi, Govt. Pleader, for the Respondent

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## **Judgement**

Chagla, C.J.—A sanad in respect of the village of Khasbag situated in the Belgaum -District was granted to one Mootoo Koomar Moodliar on March 2, 1860. It is not disputed that as a result of this sanad all proprietary rights of Government in this village vested in the grantee. The petitioners purchased this village from the successor-in-title of the original grantee by a sale-deed dated March 27, 1947. This village of Khasbag is a surveyed and settled village. Some time prior to December, 1947, the inferior holders of survey Nos. 68 and 69 of this village converted these survey numbers to non-agricultural purpose. Originally agricultural assessment was levied upon these survey numbers and that assessment was collected by the petitioners under their right under the sanad.

When these survey numbers were converted to non-agricultural use, the petitioners called upon the Collector of Belgaum to levy upon these numbers non-agricultural assessment and a fine u/s 66 of the Bombay Land Revenue Code. The Collector having declined to do so, the petitioners have preferred this petition for a writ against the State of Bombay compelling it to levy non-agricultural assessment and also a fine, and the question that we have to consider is whether there is any obligation upon the State Government when

land which is originally used for agricultural purpose and upon which agricultural assessment is levied to impose a non-agricultural levy when the land is converted for non-agricultural purpose.

In order to decide this question we must first turn to the relevant provisions of the Bombay Land Revenue Code and the first section which we have to consider is Section 48. Sub-section (2) of that section provides:

"Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provisions of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the State Government may prescribe in this behalf".

It is clear that under this sub-section there is a liability of the rate of assessment being altered if the land is used for a different purpose. But whether the holder of the land is in fact liable or not would depend upon the rules framed by Government under this sub-section.

Then Section 66 provides:

"If any such land be so used 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 the Provincial Government, direct."

Therefore, Section 66 imposes upon the occupant besides a liability to pay non-agricultural assessment also a liability to pay a fine for changing the use of the land if no permission had been obtained from the Collector.

2. Now, turning to the rules, Rules 80 to 90 deal with imposition and revision of non-agricultural assessment in the case of unalienated lands and Rules 92 onwards deal with alteration of assessment in surveyed and settled alienated villages, and the rule which is relied upon is Rule 95

Sub-rule (1) of that rule provides:

"When the Collector receives information that any inferior holder of land assessed for purposes of agriculture only has rendered himself liable to any of the penalties specified in Section. 66 the Collector shall address to the holder or holders of the alienated village a letter communicating the information and the liabilities of the holder of the said land and showing the non-agricultural assessment or fine or both leviable and requesting the holder or holders of the

alienated village to intimate within such time as the Collector considers reasonable whether the liabilities should or should not be enforced".

And Sub-rule (2) provides:

"If such holder or holders intimate that the-liabilities should be enforced, they shall be enforced accordingly; ....."

Therefore, it is contended that if the inamdar intimates to the Collector that he should enforce-the liability with regard to payment of non-agricultural assessment and the fine, the Collector has no discretion but must enforce the levy against the occupant. But what is overlooked is that the right of the inamdar only arises under Rule 95 provided there is a liability upon the occupant to pay non-agricultural assessment, and before Rule 95 can come into operation, we must be satisfied that there is a liability which can be enforced under that rule.

For the purpose of the question of liability we shall have to turn to Rule 92, and that rule provides:

"When land assessed for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall, unless otherwise-directed by the State Government, be altered under Sub-section (2) of section 48 by the-Collector in accordance with Rules 81 to 87 inclusive".

Now, Rule 92 casts an obligation upon the Collector-to alter the assessment of lands which were assessed for the purpose of agriculture being used for any other purpose under Sub-section (2) of Section 48 and in accordance with Rules 81 to 87, but this obligation of the Collector is made subject to any direction issued by the State Government.

The contention of Mr. Jahagirdar is that the only direction that the State Government can issue is to alter the rates of assessment laid down under Rules 81 to 87, but Government has no power to issue a direction to the Collector not to alter the assessment under Sub-section (2) of Section 48. In our opinion, it is impossible to accept that contention, because looking to the place in which the expression "unless otherwise directed by the State Government" occurs, it is clear that that expression governs "altered under Sub-section (2) of Section 48" and not "in accordance with Rules 81 to 87".

Therefore, the power of the Collector to alter the assessment is made subject to the direction of the State Government, and in this- particular case the State Government has issued a direction under Rule 92 upon the Collector not to alter the assessment under Sub-section (2) of Section 48. Therefore, if that direction of Government is a valid and proper direction, then it is clear that the Collector had no power to alter the assessment under Sub-section (2) of Section 48, and if the assessment could not be altered, much less could a fine be imposed u/s 66.

Attention may also be drawn to the corresponding Rule 80 which, deals with

alteration of assessment in the case of unalienated lands, and that rule provides:

"Where unalienated land assessed or held for purposes of agriculture only is subsequently used for any purpose unconnected with agriculture, the assessment upon the land so used shall except in the cases provided for in Rule 43-B, 51 or 76 and except as otherwise directed by the State Government be altered under Subsection (2) of Section 48 & such alteration shall be made by the Collector in accordance with the rules contained in this Chapter."

Mr. Jahagirdar points out that Rules 43-B, 51 and 76 deal with rates and therefore the expression "except as otherwise directed by the State Government" should also be read "ejusdem generis" and can only apply to the question of rates and not to the prohibition to alter the assessment. That contention also is untenable. In the first place, if we turn to Rules 43-B, 51 and 76, R. 43-B deals with disposal of small strips of land adjacent to occupied unalienated building sites; R. 51 deals with terms on which building sites may be disposed of and R. 76 deals with prohibition against the use of unalienated land, for the purpose of manufacture of salt without the previous permission in writing of the Collector of the District.

But there is no reason whatever to confine the general words used in Rule 80, viz., except as otherwise directed by the State Government, to cases similar to those contemplated by Rules 43-B, 51 and 16. The language of Rule 80 is clear that the alteration is to be made in accordance with the rules contained in Chapter XIV, except in two cases, one case being where the case falls under Rules 43-B, 51 and 76 and the other case being where there is a direction to the contrary by the State Government, and we see no warrant whatever for confining the power of the State Government under this rule only to altering the rate of assessment and not prohibiting an alteration of the rate when the use of the land has been changed.

It is difficult to accept the position that the State Government under R. 80 in proper cases cannot direct the Collector to continue to assess land on the basis of agricultural assessment, although the use of the land has been changed. Therefore, Rule 80 and Rule 92 stand on the same footing. The Collector has to alter the assessment under Sub-section (2) of Section 48 according to the rules laid down, unless he gets a direction from the State Government that he must not alter the assessment and the power of the State Government is clear, wide and overriding. This is exactly what has happened here.

The State Government has issued a direction under Rule 92 and the Collector has felt himself bound by that direction and has not altered the assessment, nor has he levied a fine u/s 66. "Therefore, this is not a case where we can hold that there was an obligation upon the State Government to alter the assessment and, therefore, compel the State Government to carry out its statutory duties.

3. Now, turning to the merits, there is considerable force in what Mr. Jahagirdar contends on behalf of the petitioners. It is surprising that the only affidavit filed

by Government on this petition is the affidavit of the Collector Mr. Joshi, and Mr. Joshi has shown in this affidavit a commendable fairness; when in para. 6 of the petition the petitioners say

"that in these circumstances opponent No. 2 was bound to take action u/s 66 of the Bombay Land Revenue Code, 1879, and under Rule 95 of the Land Revenue Rules, 1921 and levy the fine and the non-agricultural assessment in respect of the said lands",

the Collector, in reply, says that he agrees with that submission.

But Mr. Desai rather put out of countenance by this affidavit of the Collector says that the Government is not bound by the legal submission made by the Collector. The reason why the Collector agrees with this submission is not so much on the ground of law as on the ground of merits, because the Collector does not see any reason why under the ordinary rules he should not have been allowed to take action under Rule 95, but he feels helpless because a direction has been issued by Government. Now, we should have thought that Government would pursue the same policy with regard to the levy of non-agricultural assessment in the case of alienated lands as it would in the case of unalienated lands.

We are also sure that the fact that the assessment will go to the inamdar will not weigh with Government in doing the right thing. It has been pointed out in the affidavit of the Collector that poor peasants have put up structures on the land in question. Now, we have been given the value of the structures put up and we find that in some cases the value is as much as Rs. 20,000, Rs. 12,000, Rs. 10,000, Rs. 8,000, Rs. 6,000 Rs. 4,000 and Rs. 5,000. Poverty, after all, is a relative term, but it cannot be said that a peasant who can afford to spend Rs. 20,000 on his structure is exactly a poor peasant and many persons who are not peasants would like to be poor in that sense.

Therefore, although upholding the right of Government to issue a direction under Rule 92, we would seriously ask the Government to consider whether on merits the Collector should not be asked to alter the assessment on such terms as Government should consider proper. Government should consider whether if this land was unalienated, they would have exempted these peasants from payment of additional assessment. If Government can come to that conclusion, then certainly there is no reason why they should alter the assessment in the case of the inamdar.

But the reason suggested by the Collector in his affidavit that the Government are not bound to oblige the inamdar is a reason which does not commend itself to us. The other grievance made by the petitioners that the jurisdiction of the Tribunal has been ousted because instead of the order being passed by the Collector, the order has been passed by the State Government itself has not much merit because if our view is correct that Government has authority to issue an order under Rule 92, obviously that order cannot be revised by the Revenue Tribunal and also obviously that order can only be passed by the State

Government and not by the Collector.

4. The result is that the petition fails and is dismissed. No order as to costs.

5. Petition dismissed.