

(1958) 05 BOM CK 0002

In the Bombay High Court

Case No : O.C.J. Appeal No. 29 of 1958 and I.C. No. 370 of 1955 & O.C.J. Appeal No. 29 of 1958 in I.C. No. 370 of 1955

Western India Theatres Ltd.

APPELLANT

Vs

Ishwarbhai Somabhai Patel

RESPONDENT

Date of Decision : 02-05-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 2, 37
Companies Act, 1913 — Section 202
Companies Act, 1956 — Section 439, 483
High Court of Bombay (Original Side) Rules, 1957 — Rule 751
Stamp Act, 1899 — Article 48

Citation : AIR 1959 Bom 386 : (1958) 60 BOMLR 1288 : (1959) ILR (Bom) 295

Hon'ble Judges : Chagla, C.J;S.T. Desai, J

Bench : Division Bench

Advocate : Purushottam Tricumdas, H.D. Banaji and R.M. Kantawalla, S.V. Gupte and J.M. Thakore, for S.R. Hemand, a shareholder, Madon, for Khanbahadur Taraporewalla, a creditor, J.M. Thakore, for A.C. Patel and Ors. as mortgagages, M.S. Sanghvi, for Shareholders and P.N. Bhagwati, for Narayan Investment Trust, for the Appellant; K.K. Desai and G.K. Munshi, for the Respondent

Judgement

D.V. Vyas, J.—This is an application under Articles 226 and 227 of the Constitution of India and it is filed by one Jadeja Habhubha Viraji of Kalawad. The reliefs which the Petitioner has prayed for are declarations (i) that "extinguishment" of his Mulgiras rights by Section 39 of the Saurashtra Land Reforms Act 1951 is void, and (ii) that the lands held by the Petitioner are not liable to any assessment, tax or cess. A further prayer made by the Petitioner is that it should be declared that Sub-sections (2) and (3) of Section 7 of the Saurashtra Local Development Fund Act, 1958, are ultra vires the legislative competence of the Saurashtra State Legislature and that the notice dated 14-4-1957 issued upon the Petitioner by the Mamlatdar for the levy of cess in pursuance of the Saurashtra Local Development Fund Act, 1956, is void and illegal and should therefore be quashed. It is contended by the petitioner that the

levy of cess from him at the rate of three annas on the amount of full assessment is void, unauthorised and illegal. A prayer is also made by the Petitioner that the authorities be restrained from recovering any amount of cess from him under the Saurashtra Local Development Fund Act, 1956.

2. The facts upon which this Petition is founded may be briefly stated. The Petitioner says that he is a citizen of India and that he is a Girasdar of C class within the meaning of Section 2(15) read with Section 5(1)(c) of the Saurashtra Land Reforms Act, 1951. He contends that his ancestors were holding Mulgiras lands at Khandhera and Sanala villages in the Kalawad Taluka under the old Nawanagr State. The Petitioner says that his ancestors were enjoying full proprietary rights over the aforesaid Mulgiras lands. These rights of his ancestors as full owners of the Mulgiras lands were recognised by various Hak Patrahs which were issued in their favour by the Rajasthanik Court of the old Political Agency of Kathiawar.

3. The Petitioner next contends that he had in his possession and of his ownership Giras land admeasuring 37 acres and 3 gunthas at Khandhera and giras land admeasuring 19 acres and 22 gunthas at Sanala, aggregating to 56 acres and 25 gunthas. According to the Petitioner, he was enjoying full proprietary rights over these lands till the year 1948, during which year, on 15th April, the Ruler of the former Nawanagar State handed over the administration of his State to the Rajpramukh of the United State of Kathiawar. The Petitioner says that the proprietary rights of the former girasdars of Kathiawar, as they existed upon the date of the merger, were accepted and recognised by the United State of Kathiawar. According to the Petitioner, the Girasdar-landholders were enjoying their lands by personally cultivating them or by leasing them out. The Petitioner then refers to Ordinance No. 41 of 1949 dated 8-7-1949, by which a provision was made for the reservation or allotment of Gharkhed land to the Girasdars. The Petitioner then says that on 1-9-1951, when the Saurashtra Land Reforms Act, 1951, came into force, the Girasdari system was ended and a scheme was embodied in the Act itself to provide for the payment of compensation to the Girasdars for the extinguishment of their rights as such. The Petitioner refers to an application made by him to the Mamlatdar for occupancy certificate in respect of his Gharkhed lands. An occupancy certificate was granted to him by the Mamlatdar of Kalavad. It was granted on 15-9-1954. Under the said occupancy certificate, the lands held by the Petitioner are made liable to assessment u/s 40 of the Land Reforms Act read with the third Schedule to the said Act. The Petitioner says that u/s 40 of the Land Reforms Act, he is made liable to pay land revenue to Government at the rate of four annas per acre for the first twenty-one years and thereafter he is made liable to pay full assessment for these lands. It is not disputed that the full assessment for these lands u/s 44 of the Land Reforms Act would be Rs. 83-6-7, whereas the assessment recoverable from the petitioner u/s 40 of the Act at the rate of four annas per acre would be Rs. 9-4-4. The Petitioner's grievance is that by virtue of the enactment of the Land Reforms Act of 1951, his status as a Girasdar was

put an end to and he was converted into an ordinary occupant of lands which were formerly held by him as a Mulgirasia. It is in the context of these circumstances that the Petitioner contends in para 7 of his petition that the "extinguishment" of his status and rights as a Mulgirasia was ultra vires and unconstitutional. The Petitioner says that he is not merely an occupant of his lands, but he has got full proprietary rights over his lands in his capacity as a Girasdar. That being so, says the Petitioner, he is not liable to pay any assessment to Government for these lands either u/s 44 or u/s 40 of the Land Reforms Act. The Petitioner next contends that even upon the assumption that his status as a Girasdar was lawfully extinguished and he was validly created an occupant under the Land Reforms Act, even so he cannot be made liable to pay assessment for his lands as an ordinary occupant would be. He has made this contention in this way. It is his case that the lands which are retained by him are retained by way of compensation for the deprivation of his status and privileges as a Mulgirasia by the coming into force of the Land Reforms Act. As the lands of which he is now in possession have been allowed to be retained by him by way of compensation, he cannot be saddled with a liability to pay assessment for these lands. It is in this way that he contends that even if it be held that he was validly converted into an occupant of these lands, even so the notice issued to him to pay assessment for these lands to Government was an illegal notice.

4. Then the Petitioner refers to the enactment of the Saurashtra Local Development Fund Act, being Act No. XXVI of 1958. Under this Act, the Government is empowered to levy from every occupant of land a cess at the rate of three annas per rupee of the assessment payable by such occupant. The contention of the State of Bombay is that the Petitioner is liable to pay cess at the rate of three annas per rupee calculated on the amount of full assessment that would be payable by him u/s 44 of the Land Reforms Act after the period of twenty-one years. As I have stated above, the Petitioner's contention is that he is not liable to pay any land revenue upon these lands nor any cess. He contends that even if his submission challenging the legality of the levy of land revenue assessment and cess from him be rejected, even so for the purpose of levying a cess upon him, the land revenue assessment payable by him u/s 40 of the Act should be taken into account and not the land revenue assessment payable by him u/s 44 of the Act.

5. The Petitioner says that the Saurashtra Local Development Fund Act, 1956, was beyond the legislative competence of the legislature of the State of Saurashtra, was also in violation of Article 31 of the Constitution and therefore the levy of cess from him upon any calculation of the land revenue assessment payable by him would be void. The petitioner says that the allotments of Gharkhed land to him was a part of the scheme of compensation provided for by the Land Reforms Act, the compensation being for the extinguishment of the proprietary rights held by the Girasdar, and therefore no cess can be validly levied upon him under the Saurashtra Local Development Fund Act, 1956. It is the petitioner's case that by the imposition of a cess under the above Act his

right to the enjoyment of his Gharkhed land is adversely affected and the scheme of compensation contained in the Land Reforms Act is defeated. It is upon these contentions that the petitioner has prayed for the various relief to which I have referred at the commencement of this judgment.

6. The Petitioner's learned advocate Mr. Baxi has made several submissions before us. His first contention is that Section 39 of the Land Reforms Act under which his status as a Mulgirasia was abolished and he was made an occupant in respect of his Gharkhed land was ultra vires the competence of the legislature of the State of Saurashtra. He has made this contention in this way. He says that under Article 31 of the Constitution it is provided that no person shall be deprived of his property save by authority of law and that such law must provide for some compensation to the person deprived of his property. It is the Petitioner's grievance that by passing orders u/s 39 of the Land Reforms Act the State of Saurashtra deprived him of his proprietary rights over his lands in contravention of Article 31. It is in this way that he contends that Section 39 of the Land Reforms Act is ultra vires the legislative competence of the State Legislature. In our view, there is no question of deprivation of the Petitioner's property in this case. It is true that after the Land Reforms Act came into force on 1-9-1951, the Petitioner applied for an occupancy certificate with reference to these Gharkhed lands, and the occupancy certificate was granted to him by the Mamlatdar. It is true, therefore, that upon the coming into force of the Saurashtra Land Reforms Act, the Petitioner became an occupant. But we do not see how, by his becoming an occupant, his proprietary rights in the lands were taken away or even adversely affected. Mr. Baxi says that whereas previously the Petitioner could call himself a Mulgirasia, and could contend that he had full proprietary rights over his lands, all that he could now say is that he is an occupant of these lands. So far as mere words in which this contention is cloaked are concerned, they appear impressive but upon analysis the Petitioner's complaint is without real substance. We are unable to see what proprietary right of the Petitioner, which he could exercise over his property prior to the coming into force of the Land Reforms Act, is not now exercisable by him. We put this question to Mr. Baxi, but Mr. Baxi had no answer to it. He could not point out to us what particular rights, which were previously available to the Petitioner to be exercised in reference to these Gharkhed lands, were now denied to him. We are unable to appreciate Mr. Baxi's contention that by virtue of the Petitioner having become an occupant, he has ceased to be the owner of these lands of which he was previously a Mulgirasia. In our view, this grievance is an imaginary one. Mr. Baxi has not been able to point out to us any provision of law which lays down that in respect of the Gharkhed lands which were formerly held by a Mulgirasia, his property after the coming into force of the Land Reforms Act, becomes the property of the State. In our view, the Petitioner even now continues to be the owner of these Gharkhed lands in the same way and to the same extent to which he was the owner previously. It is true, as Mr. Baxi contends, that after the Petitioner's recognition as an occupant of these lands, the lands would become

liable to be surveyed and settled and a liability would also arise for the Petitioner to pay assessment. But, in our view, the fact that a subject might have to pay assessment or the fact that his lands might become liable to be surveyed and settled, would not detract from his proprietary rights over the lands. Upon a careful consideration, therefore, we must hold that notwithstanding the fact that an occupancy certificate has been granted to the Petitioner with reference to his Gharkhed lands, no derogation is made from his proprietary rights over these lands. Accordingly, Mr. Baxi's first contention that Section 39 of the Land Reforms Act is ultra vires the competence of the legislature of the State must be rejected.

7. Mr. Baxi's next contention is that the levy of a cess of three annas per rupee of assessment is not a tax, and, therefore, the levy of the cess was outside the legislative competence of the Saurashtra State legislature. In this connection, Mr. Baxi has made a two-fold submission: (i) that a cess is not a tax, and (ii) that even if a cess be a tax, it was beyond the legislative competence of the Saurashtra State legislature to enact provisions about it in the Saurashtra Local Development Fund Act. Mr. Baxi says that a cess is not a tax, because the proceeds of the cess do not go to the general revenues. It is true that the proceeds of the local cess would go to the local fund; but simply because the proceeds of the cess would go to local fund, it could not be contended with any validity that a cess is not a tax. It is, in our view, competent to the legislature to assign any portion of the general revenue to a particular local fund. Therefore, merely because of the fact that the proceeds of this cess have been assigned to the local fund, it could not be contended that the cess is not a tax. There is also no substance in Mr. Baxi's further contention that the imposition of this tax was not competent to the legislature. In this connection, we have only to turn to List II which is the State List in the Seventh Schedule to the Constitution. In this list, we find items 45 and 49. Item 45 relates to land revenue, including assessment, and item 49 relates to taxes on lands and buildings. Mr. Baxi has endeavoured to bring the item of cess within the ambit of item 66. Now item 66 in List II in the Seventh Schedule is an item relating to fees in respect of any of the matters mentioned in this list. We do not understand how "cess" would amount to fees under item 66. Fees are usually leviable in respect of particular services rendered. There is no question of rendering any services in respect of which the Petitioner has been made liable to pay three annas per rupee of assessment. Therefore it is clear that the cess which has been ordered to be recovered from him is recovered by way of a tax upon lands which are held by him. As to the assessment itself which is levied upon the Petitioner because of the grant of an occupancy certificate to him, it would clearly fall under item 45 of the list. In these circumstances, we see no substance in Mr. Baxi's contention that the levy of this particular cess of three annas per rupee of assessment was outside the competence of the Saurashtra State legislature upon the ground that it is not a tax leviable by the legislature.

8. The next contention which Mr. Baxi has sought to press before us is a

contention based on Article 14 of the Constitution. Now Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Mr. Baxi's contention is that legislation directing the levy of a certain cess from the occupants in other villages of Saurashtra was a discriminatory legislation and, therefore, a legislation in violation of Article 14 of the Constitution. So far as this contention of Mr. Baxi is concerned, it is also a two-fold contention. Mr. Baxi says that he levy of cess under the Saurashtra Local Development Fund Act from the occupants in Saurashtra was a discriminatory levy, because the occupants in the other parts of the State of Bombay were not liable to such levy. There is no substance in this contention. In other parts of the State also, a local fund cess is levied under the law enacted for that purpose. Mr. Baxi says that even that law would be ultra vires Article 14 of the Constitution, because the provisions of that enactment would hit only those subjects who reside in those parts of the State. The contention is untenable. If Mr. Baxi is right, it would only mean that the Bombay enactment on the subject would be bad because its provisions would apply only to the subjects of Bombay State resident outside Saurashtra, and the Saurashtra enactments would be bad, because the residents of Saurashtra only would be hit by the provisions thereof. Mr. Baxi's contention in its ultimate analysis would mean that until unification in legislation is introduced all local laws would be bad. The position is so obviously untenable that it does not need to be elaborately considered.

9. The second part of Mr. Baxi's contention on this point is that under the Saurashtra Local Development Fund Act, 1956, only the occupants in Saurashtra are taxed by the levy of a cess, where as other persons are not so taxed, and therefore the levy is an illegal levy. This is an unsound contention. It is well known that under the provisions of the Income Tax Act, only those persons whose income exceeds a certain level are liable to pay that tax, while others are not. Could it be validly contended on that ground that the provisions of the Income Tax Act are discriminatory? If Mr. Baxi's present contention is right, it would mean that even the Income Tax Act offends against Article 14 of the Constitution upon the ground that it is discriminatory legislation. I have referred to this instance only to show that Mr. Baxi's contention has no substance.

10. Mr. Baxi has next attacked the provisions of Sub-sections. (2) and (3) of Section 7 of the Saurashtra Local Development Fund Act on the ground that they are arbitrary provisions. We are unable to discover any arbitrariness in these Sub-sections. Sub-section (2) provides that the Government shall allot to every District Panchayat such sums as it seems fit out of the fund established under Sub-section (1). Now if the words in Sub-section (2) had been as it likes instead of as it deems fit" we might have seen some force in Mr. Baxi's contention that the provisions of Sub-section (2) are arbitrary, in that they confer arbitrary powers upon the Government; but that is not so. Important words in Sub-section. (2) are the words "as it deems fit". it is clear that the legislature intended that the Government should apply their minds before allotting an

amount out of the Local Development Fund to a District Panchayat. Now if the Government applies its mind, considers each particular case with due regard to requirements of a particular locality and then makes an allotment, how could it be contended that the provisions of Sub-section (2) of Section 7 are arbitrary provisions? Government would know best through its officer which villages are backward villages and therefore in need of allotment of funds and which are not so. This could not possibly be known to the legislature. Therefore the legislature enacted Sub-section (2) and empowered the Government to make an allotment out of the Local Development Fund to every District Panchayat as it considers fit for the purpose of development of that particular areas. Section 7 refers to the establishment of a Local Development Fund. The very caption of the section would show that its provisions have for their object the development of local areas, and as I have said, Government would know best through its officer which particular areas need development more than other areas. For these reasons we cannot accept Mr. Baxi's contention that the provisions of Sub-sections. (2) and (3) of Section 7 arbitrary provisions.

11. Mr. Baxi's next contention is that Section 4 of the Saurashtra Local Development Fund Act is a confiscatory section. Mr. Baxi has made this contention in this way. The lands which are retained by the Petitioner and of which the Petitioner is in possession have been allowed to be retained with him by way of compensation for the deprivation of his status as a Mulgirasia. That being so, says Mr. Baxi, if any intrusion is made upon the Petitioner's enjoyment of these lands, that intrusion would have the character of a confiscatory intrusion. In this way Mr. Baxi says that the levy of a cess to the extent of three annas per rupee of assessment upon the Petitioner would amount to a confiscatory levy. We regret we are once again unable to see eye to eye with Mr. Baxi. Levy of a cess of three annas per rupee of assessment is nothing more than a measure of taxation and it is perfectly competent to the State legislature to levy a tax upon the items mentioned in List. II in the Seventh Schedule. Mr. Baxi says that the imposition of a cess of three annas per rupee of assessment would adversely affect the scheme of compensation to be paid to the Petitioner for the deprivation of his rights of a Mulgirasia. The very basis of this contention is unsound. We cannot agree with Mr. Baxi that Gharkhed lands which the Petitioner retains are allowed to be retained by him by way of compensation. The Petitioner is permitted to retain these lands as a part of the scheme of rehabilitation of the Girasdars after the coming into force of the Saurashtra Land Reforms Act. The lands are not permitted to be retained by the Petitioner by way of compensation. Accordingly, no question arises of taking away, cancelling or affecting the concession or scheme of compensation. Even if it be assumed that the retention of these lands with the Petitioner is by way of compensation, which assumption as I have just said is not a valid assumption, even so a new tax could be levied by the legislature upon the lands permitted to be retained with the Petitioner by way of compensation. Therefore, whichever way we examine this particular submission of Mr. Baxi, we are unable to see any substance in it.

12. Lastly, there is contention of Mr. Baxi as to the interpretation of Section 4 of the Saurashtra Local Development Fund Act and that contention must be upheld. Section 4 provides

"With effect from 1-8-1956, the Government shall levy from every occupant a cess at the rate of three annas on every rupee of assessment payable by such occupant."

Important words are "assessment payable". Now the word "assessment" is defined in Section 2(1) of the Act and the definition says:

""Assessment" means the assessment for land revenue on agricultural land fixed or continued under the Bombay Land Revenue Code, 1879, as adapted and applied to the State, or u/s 44 of the Saurashtra Land Reforms Act, 1951, or u/s 19 of the Saurashtra Barkhali Abolition Act, 1951, as the case may be."

13. As the definition contains a reference to Section 44 of the Saurashtra Land Reforms Act, 1951, the learned Special Government Pleader contends that "assessment payable", which expression is used in Section 4 of the Act, must mean assessment payable by the Petitioner u/s 44 of the Saurashtra Land Reforms Act. Upon this contention, the learned Special Government Pleader says that calculation of assessment must be made upon the assessment payable by the Petitioner u/s 44 of the Saurashtra Land Reforms Act. We are unable to accept this contention. We are of the view that a plain and natural meaning must be given to the expression "assessment payable", and the natural meaning is the assessment which the Petitioner is liable to pay at present. Now, there is no doubt that at present and for some years hereafter, that is to say, for the total period of 21 years after the enactment of the Saurashtra Land Reforms Act, the Petitioner is liable to pay assessment at the rate of four annas per acre. Upon that calculation, the Petitioner's liability to pay assessment is to the tune of Rs. 9-4-4. In our view therefore, in the context of the present case, "assessment payable" within the meaning of Section 4 of the Saurashtra Local Development Fund Act, would be Rs. 9-4-4. Upon that calculation of the assessment, the cess payable by the Petitioner under the Saurashtra Local Development Fund Act must be calculated. The Mamlatdar issued a notice calculating the cess upon the basis of the assessment being Rs. 83-6-7. That notice must be declared illegal. Accordingly upon this limited point, viz., the point of the legality of the notice issued by the Mamlatdar for the recovery of the cess from the Petitioner at the rate of three annas per rupee on the basis of the assessment being Rs. 83-6-7, the application must be allowed and the notice issued by the Mamlatdar must be quashed. A fresh notice may be issued to the petitioner calling upon him to pay cess at the rate of three annas per rupee, and for this purpose the calculation must be made on the amount of assessment payable by the petitioner u/s 40 of the Saurashtra Land Reforms Act. So far as the other prayers which the Petitioner has made in the application are concerned, the application fails and is rejected. We make no order as to costs, having regard to the circumstances of the case.

14. Order accordingly.