RANGILDAS VARAJDAS KHANDWALA

v.

COLLECTOR OF SURAT AND OTHERS.

1960

October 3.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Inams—Abolition of Personal Inams—Constitutional validity of Enactment—Land used for non-agricultural purpose—Levy of full assessment by Collector—Validity—Bombay Land Revenue Code, 1879 (Bom. 5 of 1879), ss. 45, 48, 52, 117-R—Bombay Personal Inams Abolition Act, 1952 (Bom. 42 of 1953), ss. 4, 5, 7—Constitution of India, Arts. 31-A, 294(b).

The appellant was the holder of a personal inam which he had purchased from the original inamdar to whom a Sanad had been issued under Bombay Act No. VII of 1863. He was paying Rs. 7 as salami and Rs. 6-3-0 as quit rent, the full assessment of the land being Rs. 56-8-0. The land which formed part of the inam was originally in a village but subsequently became a part of the suburbs of the city of Surat and as the land was being used for non-agricultural purpose and a large bungalow had been erected on it, the Collector decided that it was liable to non-agricultural assessment under s. 52 of the Bombay Land Revenue Code, 1879, with effect from August 1, 1955, in view of proviso (b) to s. 4 of the Bombay Personal Inams Abolition Act, 1952. The appellant challenged the constitutionality of the Bombay Personal Inams Abolition Act, 1952, on the grounds, inter alia, (1) that the Act was not protected by Art. 31-A of the Constitution of India as the property which had been dealt with under the Act was not an estate and no compensation had been provided in the Act for taking away the property of the appellant, and (2) that in view of the fact that the holder of the inam was given a Sanad when his inam was recognised, it was not open to the State of Bombay to enact a law which would in any way vary the terms of the Sanad. The appellant also contended that, in any case, the Collector's order to the effect that the land should be assessed under s. 52 of the Bombay Land Revenue Code, 1879, as non-agricultural was incorrect because (1) s. 7 of the Act created an exception to ss. 4 and 5 with respect to lands of inamdars used for building or for other non-agricultural purposes and therefore the appellant's inam land which was used entirely for non-agricultural purposes could not be assessed under s. 5 of the Act, (2) that s. 52 of the Code which gave power to the Collector to make assessments of lands not wholly exempt from the payment of land revenue did not apply to this case because here the assessment had been fixed under the provisions of Ch. VIII-A of the Code and s. 52 only applied when no assessment had been fixed under Ch. VIII-A.

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Held: (1) that the Bombay Personal Inams Abolition Act, 1952, was valid and was protected by Art. 31-A of the Constitution of India.

Gangadharrao Narayanrao Majumdar v. *State of Bombay*, [1961] 1 S.C.R. 943, *Thakur Jagannath Baksh Singh* v. *United Provinces*, [1946] F.C.R. 111 and *Maharaj Umeg Singh* v. *The State of Bombay*, [1955] 2 S.C.R. 164, followed.

(2) that the exception made in s. 7 of the Act only saved such inam lands as were used for building or other non-agricultural purposes by the inamdar from vesting in the Government, but they remained subject to the provisions of ss. 4 and 5 of the Act.

(3) that s. 52 of the Bombay Land Revenue Code, 1879, when it said that the section would not apply where assessment had been fixed under Ch. VIII-A of the Code, referred to actual assessment under the Chapter and not to what was deemed to be an assessment under that Chapter by virtue of s. 117-R, and that as the land in the present case was not wholly exempt from revenue and as in fact no assessment had been fixed on the land under Ch. VIII-A, s. 52 would apply and the Collector would have power to make an assessment in the manner provided by that section.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6 of 1959.

Appeal by special leave from the judgment and order dated March 5, 1957, of the Bombay High Court in Special Civil Application No. 3255 of 1956.

Dhan Prasad Balkrishna Padhye and *P. K. Chatterjee*, for the appellant.

H. N. Sanyal, Additional Solicitor-General of India, *N. P. Nathwani*, *K. N. Hathi* and *R. H. Dhebar*, for the respondents.

1960. October 3. The Judgment of the Court was delivered by

Wanchoo J.

WANCHOO J.—This appeal by special leave raises questions relating to the constitutionality and interpretation of certain provisions of the Bombay Personal Inams Abolition Act No. XLII of 1953, (hereinafter called the Act). The brief facts necessary for present purposes are these. The appellant was the holder of a personal inam which he had purchased from the original inamdar to whom a Sanad had been issued under Bombay Act No. VII of 1863. The land

which forms part of the inam was originally in village Athwa but is now in the suburbs of the city of Surat. The appellant was paying Rs. 7 as Salami and Rs. 6-3-0 as quit-rent, the full assessment of the land being Rs. 56-8-0. In November, 1952, the City Survey Officer of Surat wanted to levy non-agricultural assessment on this land under s. 134 of the Bombay Land Revenue Code, 1879, (hereinafter called the Code), as the land was being used for non-agricultural purpose and a large bungalow had been erected on it. The appellant objected to this and eventually in September, 1954, he was informed by the Collector that he would not be assessed under s. 134 of the Code but was liable to non-agricultural assessment with effect from August 1, 1955, in view of proviso (b) to s. 4 of the Act. The appellant objected to this also. The Collector decided on July 28, 1955, that the land was liable to full assessment from August 1, 1955, as non-agricultural under s. 52 of the Code. The appellant then went up in appeal to the Bombay Revenue Tribunal which was dismissed. He filed a writ petition in the High Court challenging the order of the Revenue Tribunal and also challenging the constitutionality of the Act. The High Court rejected the application. It relied on an earlier decision of that Court so far as the challenge to the constitutionality of the Act was concerned. It also held that the order of the Collector by which non-agricultural assessment was to be levied on the applicant from August 1, 1955, was correct. The appellant then applied for a certificate to appeal to this Court which was rejected. He then filed a special leave petition in this Court and was granted special leave; and that is how the matter has come up before us.

So far as the constitutionality of the Act is concerned we have considered it in *Gangadharrao Narayanrao Majumdar* v. *State of Bombay* (1) in which judgment is being delivered to-day, and have upheld the Act. The only fresh point that has been urged in this connection is that in view of Art. 294(b) of the Constitution and in view of the fact that the holder was given

(1) [1961] 1 S.C.R. 943.

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a Sanad when his inam was recognized, it was not open to the State of Bombay to enact a law which would in any way vary the terms of the Sanad. This argument based on the immutability of Sanads was rejected by the Federal Court in *Thakur Jagannath Baksh Singh* v. *The United Provinces* (1) and has also been rejected by this Court in *Maharaj Umeg Singh and others* v. *The State of Bombay and others* (2). We also reject it for reasons given in the two cases cited. The challenge therefore to the constitutionality of the Act fails in the present appeal also.

This brings us to the contention of the appellant that in any case the Collector's order to the effect that the land should be assessed under s. 52 of the Code as non-agricultural is not correct. We are of opinion that there is no force in this contention either. Under s. 4 of the Act, all personal inams have been extinguished and save as expressly provided by or under the Act, all rights legally subsisting on the said date in respect of such personal inams are also extinguished. Therefore the appellant cannot claim protection from being assessed fully after the Act came into force. Section 5 makes it clear that all inam lands shall be liable to the payment of land-revenue in accordance with the provisions of the Code and would thus be liable to full assessment as provided by the Code. The appellant however relied on s. 7 of the Act and contended that s. 7 created an exception to ss. 4 and 5 with respect to lands of inamdars used for building or for other non-agricultural purposes and therefore the appellant's inam land which was used entirely for non-agricultural purposes (namely, building) could not be assessed under s. 5 of the Act. As we read s. 7, we find no warrant for holding that it is an exception to ss. 4 and 5. As already pointed out, s. 4 abolishes personal inams and the rights of inamdars with respect to such inams and s. 5 makes all inam villages or inam lands subject to the payment of full assessment of land-revenue in accordance with the Code. Section 7 deals with vesting of certain parts of inam lands in the State, (namely, public

(1) [1946] F.C.R. 111. (2) [1955] 2 S.C.R. 164.

roads, lanes and paths, all unbuilt village site lands, all waste lands and all uncultivated lands and so on); but an exception has been made so far as vesting is concerned with respect to lands used for building or other non-agricultural purposes by the inamdar. The appellant relies on this exception and it is urged on his behalf that this exception takes out the land so excepted from the provisions of ss. 4 and 5. This reading of s. 7 is in our opinion incorrect. That section vests certain parts of inam lands in the Government and but for the exception even those inam lands which were used for building and non-agricultural purpose would have vested in the Government. The exception made in s. 7 only saves such inam lands from vesting in the Government and no more. The result of the exception is that such inam lands do not vest in the Government and remain what they were before and are thus subject to the provisions of ss. 4 and 5 of the Act. The appellant therefore cannot claim because of the exception contained in s. 7 that the lands excepted from vesting are not subject to ss. 4 and 5 of the Act. The argument therefore based on s. 7 must fail.

The next contention on behalf of the appellant is that the Collector has no power to assess this land to non-agricultural assessment under s. 52 read with ss. 45 and 48 of the Code. Section 45 lays down that all land unless specially exempted is liable to pay land-revenue. Section 48 lays down that the land revenue leviable on any land shall be assessed with reference to the use of the land (a) for the purpose of agriculture, (b) for the purpose of building and (c) for any purpose other than agriculture or building. Reading the two sections together it is obvious that the assessment depends upon the use to which the land is put and is to be made according to the rules framed under the Code. In the present case it is not disputed that the land of the appellant is not being used for agriculture and is actually being used for non-agricultural purposes, namely, for the purpose of building; therefore, if the land is to be assessed, as it must now be assessed in view of s. 5 of the Act to full assess-

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ment, it can only be assessed as non-agricultural. For the purpose of such assessment it is immaterial when the non-agricultural use of the land started. It was in a special category being a personal inam land and was upto the time the Act came into force governed by the law relating to personal inams. The personal inams and all rights thereunder were abolished by the Act and the land is now to be assessed for the first time to full assessment under s. 5 of the Act read with the provisions of the Code; it can only be assessed as non-agricultural land for that is the use to which it is being put now when the assessment is to be made. Section 48 makes it clear that the assessing officer when assessing the land should look to the use to which it is being put at the time of the assessment and assess it according to such use. As the assessment is to be made after the coming into force of the Act it has to be on non-agricultural basis for that is the use for which the land is being put at the time of assessment.

Lastly, it is urged that s. 52 which gives power to the Collector to make assessments of lands not wholly exempt from the payment of land-revenue does not apply to this case because here the assessment has been fixed under the provisions of Ch. VIII-A of the Code and s. 52 only applies when no assessment has been fixed under Ch. VIII-A. Reference was also made to s. 117-R which appears in Ch. VIII-A. That Chapter was introduced in the Code in 1939 and deals with assessment and settlement of land-revenue on agricultural lands. Section 117-R is a deeming provision and lays down that all settlements of land-revenue heretobefore made and introduced and in force before the commencement of the Bombay Land Revenue Code (Amendment) Act, 1939, by which this Chapter was introduced in the Code shall be deemed to have been made and introduced in accordance with the provisions of this Chapter and shall notwithstanding anything contained in s. 117-E (which deals with the duration of a settlement) be deemed to continue in force until the introduction of a revision settlement. The argument is that because of this deeming

provision, the settlement on which this land was held as inam land must be deemed to have been made under this Chapter and therefore it cannot be said that no assessment has been fixed under the provisions of Ch. VIII-A in this case. We are of opinion that there is no force in this argument. Section 117-R of the Code is a deeming provision. Section 52 on the other hand when it says that that section will not apply where assessment has been fixed under Ch. VIII-A, refers to actual assessment under Ch. VIII-A and not to what is deemed to be an assessment under that Chapter by virtue of s. 117-R. It is not in dispute that there has in fact been no assessment under Ch. VIII-A in this case. We are therefore of opinion that as the land in this case was not wholly exempt from revenue and as in fact no assessment has been fixed on this land under Ch. VIII-A, s. 52 would apply and the Collector would have power to make an assessment in the manner provided by that section.

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There is therefore no force in this appeal and it is hereby dismissed with costs.

Appeal dismissed.

MADHAORAO PHALKE

v.

THE STATE OF MADHYA BHARAT

1960

October 3.

(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Hereditary Military Pension—Bachat—Right to receive guaranteed by Kalambandis issued by Rulers of Gwalior—If can be terminated by executive order—Kalambandis, if existing law—Kalambandis of 1912 and 1935 (Gwalior)—Constitution of India, Art. 372.

The appellant was the recipient of a hereditary military pension called Bachat granted by the Rulers of Gwalior to his ancestors in recognition of military service. The right to receive the said pension was recognised by the Kalambandis of 1912 and 1935 issued by the said Rulers. When Gwalior integrated with Indore and Malwa in 1948 to form a union, s. 4 of