
(1983) 2 GLR 123

Gauhati High Court

Case No: Civil Rule No. 194 of 1982

Collector of Dibrugarh

APPELLANT

Vs

S.P.Rajkhowa and
Another

RESPONDENT

Date of Decision: Dec. 21, 1982

Acts Referred:

Assam Fixation on Ceiling of Land Holdings Act, 1956 " Section 12, 12

Citation: (1983) 2 GLR 123

Hon'ble Judges: D.Pathak, C.J. and K.N.Saikia, J

Bench: Division Bench

Advocate: A.M.Mazumdar, D.N.Choudhury, M.Z.Ahmed, N.M.Lahiri, P.Prasad, Advocates
appearing for Parties

Judgement

Saikia J.

1. The only question raised in this writ petition is whether for the purpose of determining compensation under Section 12 of the Assam Fixation of

Ceiling on Land Holdings Act 1956 the expression "annual land revenue" will include surcharge and local rate payable for the estate.

2. An area of 757 B. 2 K. 9 Lechas owned by M/s. Dibrugarh Company Ltd. having been taken over as excess land under the Assam Fixation of

Ceiling on Land Holdings Act 1956 hereinafter referred to as "the Act" the Collector by his order dated 16.6.80 assessed the compensation under

Section 12 of the Act at 25 times of the annual land revenue for 279 B. 2K. 16 Ls. and 50 times the land revenue for 477 B 3K. 13Ls.; and on

appeal under Sec. 31 of the Act the District Judge Dibrugarh in Misc. Appeal No. 2/81 by the impugned order dated 25.11.81 following an earlier

decision in Misc. Appeal No. 5/76 (Sarojini Tea Company vs. The Collector Dibrugarh) allowing the appeal ordered that the Company was

entitled to compensation @ 50 times the Land Revenue 50 times the Local Rates" and 50 times the Land Revenue surcharge in respect of the

area of 477B3K13Ls. and @ 25 times the Local Rates and 25 times the Land Revenue Surcharge in respect of the area of land measuring

279B2K17Ls."" and to interest at the rate of 2½% per annum as laid down in Section 13 of the Act. Hence this petition by the Collector of

Dibrugarh.

3. Mr. N. M. Lahiri the learned Advocate General Meghalaya raises a preliminary objection submitting that the Collector Dibrugarh has no locus

standi to file this petition inasmuch as it is the State Government who is aggrieved by the impugned order and not the Collector and as under

Section 31 of the Act only a person aggrieved could prefer an appeal the same principle should govern this writ petition as well. Mr. D. N.

Choudhury the learned Senior Govt. Advocate Assam answering submitted that in the ceiling case the Collector was the pivot and not a busy body

intermeddler; and that he was impleaded as a party respondent in the appeal before the District Judge; and that the law as to locus standi has of

late been broadened so as to include even public interest litigation in S. P. Gupta vs. Union of India (1981) Supp. S.C.C. 87. Upon hearing both

the counsels we proceeded to hear on merit.

4. Mr. Lahiri submits that the expressions "25 times the annual land revenue" and "50 times the annual land revenue" have to be understood in the

sense of the total annual land revenue payable on the estate and this must include surcharge payable on the land revenue as well as the local rate

payable on the estate. The surcharge on the land revenue it is submitted is only enhancement of the land revenue and the local rate which is payable

on the land is also a land revenue and that the appellate Court has rightly included those in annual land revenue.

5. Mr. A. M. Mazumdar the learned Advocate General Assam submits that the land revenue must mean annual land revenue as envisaged under

the Assam Land and Revenue Regulation 1886 and cannot be interpreted broadly to include surcharge imposed by the Assam Land Revenue and

Rent (Surcharge) Act 1970r hereinafter called "the Surcharge Act" and the local rate levied under the Assam Local Rates Regulation 1879; and

that such a broad interpretation will bring all impositions on the land within the meaning of land revenue. Therefore arises the aforesaid question.

6. Section 12 of the Assam Fixation of Ceiling On Land Holdings Act inter alia provides :

12. Where any land is transferred to and vested in the State Government under subsection (4) of section 7 of the Act there shall be paid

compensation which shall be determined by the Collector or any other officer authorised by the State Government in the manner and in accordance

with the principles laid down below namely :

(a) (1) Where the person from whom the excess land has been acquired held it as the owner thereof the compensation (inclusive of the value of

any tenancy right) shall be :

(i) in case of fallow land an amount equal to 25 times the full rate of annual land revenue payable for such land; and

(ii) in case of other land inclusive of the value of trees an amount equal to 50 times such annual land revenue ;

Provided that if the land is under occupation of tenant then the compensation shall be apportioned between the owner and the tenant and the share

of the owner shall be if the tenant has acquired occupancy right 15 times and in other cases 20 times such annual land revenue.

(2) Where the person from whom the excess land has been acquired held it as a tenant thereon the compensation for his tenancy right shall be:

(i) if he is an occupancy tenant 10 times the full rate of annual land revenue payable for the land when the land is fallow and 35 times such annual

land revenue in all other cases ;

(ii) if he is not an occupancy tenant 5 times such annual land revenue payable for the land when the land is fallow and 30 times such annual land

revenue in all other cases.

(3) Where there is a subtenant in the excess land acquired an amount equal to 50 per cent of the compensation payable under (1) or (2) above to

the tenant under whom he holds shall be paid out of it to the subtenant.

Explanation. Land which is not cultivated for 3 consecutive years immediately preceding the date of acquisition or which does not contain any tree

bamboo or thatch shall be regarded as follow :

Provided that where the land is revenue free or assessed to land revenue at a concessional rate or where it is not assessed to land revenue under

the provisions of the Assam Land and Revenue Regulations 1886 or of the Assam Land Revenue Reassessment Act 1936 the compensation shall

be determined on the basis of annual land revenue assessable under the provisions of the aforementioned Acts on similar full revenue paying land

situated nearest to it.

7. In section 3 (e) of the Assam Land Revenue Regulation 1886 hereinafter called "the Regulation" and Sec. 2(1) of the Surcharge Act "land

revenue" has been defined as : "Land revenue means any revenue assessed by the State Government on an estate and includes any tax assessed in

lieu of land revenue".

8. In Black's Law Dictionary we read : "Revenue". Return or yield as of land; profit as that which returns or comes back from an investment; the

annual or periodical rents profits interest or issues of any species of property real or personal; income of individual corporation government etc.

Willoughby vs. Willoughby 66 R.I. 430 19A. 2d 857 860. As applied to the income of a government a broad and general term including all public

moneys which the State collects and receives from whatever source and in whatever manner". Land revenue denotes income derived from crown

lands in Great Britain.

(9) In Assam surcharge on land revenue has been levied by the Surcharge Act. This Act however does not define "surcharge". According to the

Black's Law Dictionary "surcharge" is an overcharge; an exaction impost or encumbrance beyond what is just and right or beyond one's authority

or power. An additional tax or cost. The meaning of the word "surcharge" as given in the Webster's New International Dictionary includes among

others "to charge (one) too much or in addition" also additional taxes. "Surcharge" according to the Webster's New Twentieth Century Dictionary

means an excessive load or burden; an additional amount added to the usual charge; an excessive charge; overcharge.

10. In *Sri Vishwesha Tirtha Swamiar vs. The State of Mysore* AIR 1971 S. C. 2377 while considering the validity of Section 5 of the Mysore

Land Revenue (Surcharge) Act which levied surcharge on the land revenue at the rate of 15 up on every rupee of land revenue their Lordships of

the Supreme Court observed that surcharge fell squarely within Entry 45 and that the legislation was but an enhancement of the land revenue by

imposition of surcharge and it could not be called a tax on land revenue; that it was a common practice among the Indian Legislatures to impose

surcharge on existing tax; and that even Art. 271 of the Constitution spoke of a surcharge for the purpose of the Union being levied by way of

increase in duties or taxes mentioned in Art. 270. In *Commissioner of Income Tax Kerala vs. K. Srinivasan* AIR 1972 S. C. 491 it has been

observed that the meaning of surcharge is to charge in addition or to subject to an additional or extra charge and in reading in that way the

additional charges form a part of the income tax and super tax. In *M/s. Bisra Stone Lime Co. vs. Orissa State Electricity Board* AIR 1976 S. C.

127 it has been observed that etymologically inter alia surcharge stands for an additional or extra charge or payment. Surcharge is thus a

superadded charge a charge over and above the usual of current dues. It is in substance an addition to the stipulated rates of tariff. It has

accordingly been held that under Section 49 of the Electricity (Supply) Act enhancement of the rates by way of surcharge has been well within the

power of the Board to fix or revise the rates of tariff under the provisions of the said Act. In *Vishweshwari Tirtha Swamikal (supra)* also it has been

held that levy of surcharge on land revenue being merely an enhancement of land revenue and not a tax on land revenue it is within the legislative

competence to levy surcharge on the existing land revenue under Schedule VII List II Entry 45.

11. On the basis of the above decisions Mr. Lahiri submits that surcharge on land revenue is to be treated as land revenue as the legislature levied

it under the same Entry of the State List under which it could realise land revenue. Same argument is also advanced in respect on inclusion of the

local rate in land revenue.

12. The above Supreme Court rulings are binding on this Court. If we were to interpret only "land revenue" there would not be difficulty. But in

this case we are to interpret the expression ""the full rate of annual land revenue payable for the land"" as we find in Section 12(a) (1) (i) and (2) (i)

and ""such land revenue"" as used in the other clauses of the Section. The expression full rate of revenue in our opinion has to be understood in

conformity with the Assam Land and Revenue Regulation where we find different classes of Estates often referred to in terms of revenue for

example *Khiraj* or full revenue paying estates and *nisfkhiraj* or half revenue paying estates. In the introduction to the Assam Land and Revenue

Regulation there are accounts as to what lands were assessed at full rates and what were assessed at favourable rates or concessional rates and

what were full revenue paying and what were half revenue paying estates. The Assam Land Revenue Reassessment Act 1936 (Assam Act VII of

1936) has not defined the land revenue. It prescribes a procedure for reassessment culminating in submission of a rate report by the Settlement

Officer for each assessment group fixing the assessment rates. It prescribes how the rates of revenue are to be fixed. The Assam Resettlement

Manual contains similar instructions. The Assam Assessment of Revenue Free Waste Land Grant Act 1948 (Assam Act 24 of 1948) provided for

assessment of revenue free waste land grants in Assam. Revenue free waste land grants included land held on revenue free terms. Under Section 3

these grants were made liable to assessment of revenue on and from 1st April 1948 and such grants were made liable to the payment of revenue in

addition to the local rates and local cesses if any assessed thereon as stated in the Section and the rate of revenue determined should not exceed

the usual rate for the time being in force for similar class or classes of land in the neighbourhood. The rate of revenue has thus been understood in

the sense of revenue assessed on land.

13. It is instructive to examine how the Surcharge Act itself deals with land revenue. We have already seen that the Surcharge Act adopted the

same definition of land revenue as in the Regulation. Under Section 3 of the Surcharge Act every person holding land measuring 10 (ten) bighas or

more directly under the State Government shall be liable to pay a surcharge on land revenue or rent as the case may be at the rate of 30 percent of

the land revenue or rent of all classes of holdings in addition to the land revenue or the rent payable by him. The expression ""in addition to the land

revenue"" is indicative of a distinction. Besides a person holding land measuring less than 10 (ten) Bighas though liable to pay land revenue shall not

be liable to pay surcharge on his land revenue; and this is another distinguishing feature. Under Section 7 of the Surcharge Act the surcharge

assessed under that Act shall be payable ""along with the land revenue"" or the rent as the case may be in the manner prescribed and ""any arrear of

any surcharge shall be realisable as an arrear of land revenue"". Thus the legislature clearly distinguished land revenue and surcharge. The Surcharge

Act also provides for assessment of surcharge in the prescribed procedure for objection to assessment and appeal against assessment which are

not to be found in case of land revenue which is assessed in one settlement and continues till the succeeding settlement.

14. We have perused the judgment in Himangshu Sekhar Purkayastha vs. State of Assam AIR 1953 Assam 55; Girija Nanda Choudhury vs.

State of Assam AIR 1956 Assam 33; Anil Kumar Bhattacharjee vs. Deputy Commissioner and Collector Kamrup AIR 1959 Assam 147; and

Paresh Chandra Chatterjee vs. State of Assam AIR 1962 S.C. 167; but we not find any clinching observation as regards interpretation of "full rate

of annual land revenue". The Courts in the above cases appear to have proceeded on the basis that annual land revenue was what was assessed as

land revenue and did not envisage other imposts on land. In Girijananda Choudhury's case (supra) it has been observed that there could as no

acquisition of the right to enjoy landed property free of land revenue and there could therefore be no question of paying compensation "when the

land is assessed to land revenue which is so long held free of land revenue " and hence the Assam Assessment of Revenue Free Waste Land

Grants Act was not hit by the provisions of Art.31(2) or Art.19(1) (f) of the Constitution. Ram Labhaya, J., concurring observed that the right of

ownership in land in the grantee was merely recognised. Exemption from revenue was guaranteed and land revenue was distinguished from general

taxes and local rates. The land revenue was a portion of the surplus and that it was difficult to say that land revenue was anything but a tax. It was

merely a portion of the profits of agriculture compulsorily appropriated by the State without any consideration. A clear distinction runs through the

tenor of the grants between the rights of ownership in the land and the right of the Government to assess land revenue and that the expression "land

revenue" in the setting in which it occurred seemed to have been treated as a special as distinguishable from general taxes and local rates. Anil

Kumar Bhattacharjee's case (supra) dealt with the vires of the Act and was not required to deal with the question of land revenue as such. In

Paresh Chandra Chatterjee's case (supra) the Assam Land (Requisition and Acquisition) Act 1948 (Assam Act XXV of 1948 was not held not to

be Constitutionally void under Art. 31(2) of the Constitution either on the ground that it did provide for payment of compensation for the property

requisitioned or on the ground that it did not specify the principles and the manner in which compensation was to be paid but the court was not

required to interpret land revenue.

15. In the bunch of cases Benoy Mazumdar vs. Deputy Commissioner Cachar and others Civil Rule No. 28 of 1967 (vide Judgment dated

28.9.81) a Full Bench of five Hon"ble Judges of this Court dealing with the question of validity of Sec. 7(1A) of the Assam Land (Requisition and

Acquisition) Act 1948 corresponding to Section 11(2) of the 1964 Act had to deal with the question of compensation in terms of multiples of

annual land revenue and in that context referred to Assam Company Ltd. vs. State of Assam AIR 1953 Assam 177; Gaur Nitai Tea Co. vs. State

of Assam AIR 1966 Assam & Nagaland 58; Deputy Commissioner Kamrup vs. Durga Nath Sarma AIR 1968 S.C.394 (arising out of AIR 1963

Assam 141); Hemendra Prasad Barua vs. Collector of Sibsagar AIR 1976 S.C. 908 (arising out of AIR 1968 Assam 34); New Sonowal Tea

Company Pvt. Ltd. vs. Collector of Sibsagar 1977 A.L.R. 189; and P.C. Goswami vs. Collector of Darrang (1982) 1 S.C.C. 439. In the above

cases annual land revenue was taken to mean the land revenue as assessed on the land and nowhere the idea of surcharge or local rate entered into

that concept.

16. Local rates are levied under the provisions of the Assam Local Rates Regulation 1879 which provides for levy on land of rates to be applied to

defray the expenditure incurred and to be incurred for the relief and prevention of famine and to local purposes. Under Regulation 3 thereof all land

shall be liable to a levy at the rate of twenty five naye paise for every rupee of the annual value of the land in addition to the land revenue and local

cesses (if any) assessed thereon. Under Regulation 5 thereof all sums due on account of a rate imposed on any land under that Regulation shall be

payable by the landholder and shall be recoverable as if they were arrears of land revenue due on such land. When such land is held by two or

more landholders such landholders shall be jointly and severally liable for such sums. Thus local rate is for a quid pro quo. Regulation 3 of the

Local Rates Regulation envisages it ""in addition to the land revenue and local cesses (if any) assessed thereon"" and Regulation 5 makes it

recoverable ""as if they were arrears of land revenue due on such land"". From the above provisions in the Local Rates Regulation itself it is difficult

to hold that local rate is nothing but land revenue. The question of legislative competence is of course of different matter.

17. Having examined the question analytically as above the submission that surcharge and local rate are nothing but part of full rate of annual land

revenue is not tenable. We may also examine the question historically. When the Assam Land Revenue Regulation defined land revenue as stated

above the Assam Fixation of Ceiling on Land Holdings Act was not there and when the latter Act was enacted without defining land revenue the

legislature may be supposed to have proceeded with the existing definition in the Regulation. The Assam Local Rates Regulation 1879 was anterior

to the Assam Land and Revenue Regulation and it made a clear distinction between local rate and land revenue. The proviso to subclause (3) of

clause (a) of Section 12 of the Ceiling Act clearly says that ""where the land is revenue free or assessed to land revenue at a concessional rate or

where it is not assessed to land revenue under the provisions of the Assam Land and Revenue Regulations 1886 or of the Assam Land Revenue

Reassessment Act 1936 the compensation shall be determined on the basis of annual land revenue assessable under the provisions of the afore

mentioned Acts on similar full revenue paying land situated nearest to it.""" Thus the land for which compensation is required to be paid may not have

been always liable to pay land revenue and in the absence of land revenue the question of surcharge there on does not arise. Mr. Lahiri points out

that when the Ceiling Act was enacted in 1956 the land acquired in the instant case were not assessable to land revenue. That itself in our opinion

should not make any difference in so far as the intention of the legislature was concerned as regards the meaning of "full rate of annual land

revenue" in view of the above proviso

18. For the reasons discussed above we have no doubt in our mind that the legislature while enacting Section 12 of the Ceiling Act by the

expression "the full rate of annual land revenue" meant only the revenue assessed on the land as such and did not have in their mind the local rate

which was already leviable at that time and the surcharge on land revenue which was subsequently levied by the Surcharge Act.

19. In the result the impugned order dated 25.11.81 is set aside and the application is allowed to the above extent. The Rule is accordingly made

absolute. We however make no order as to costs.