(1969) 04 BOM CK 0023

Bombay High Court

Case No: Civil Appeal No. 723 of 1966

The State of Gujarat		APPELLANT
	Vs	
Patel Raghav Natha		RESPONDENT

Date of Decision: April 21, 1969

Acts Referred:

- Bombay Land Revenue Code, 1879 - Section 211, 65, 67
- Land Revenue Rules, 1921 - Rule 87(b)

Citation: (1970) 72 BOMLR 346

Hon'ble Judges: S.M. Sikri, J; R.S. Bachawat, J; K.S. Hegde, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

S.M. Sikri, J.

This appeal by special leave is directed against the judgment of the High Court of Gujarat (Vakil J.) allowing the application filed by Patel Raghav Natha, respondent before us and hereinafter referred to as the petitioner, and quashing the order dated October 12, 1961, passed by the Commissioner, Rajkot Division. The Commissioner by this order had set aside the order of the Collector, dated July 2, 1960, granting permission to the petitioner to use some land in Survey No. 417 for non-agricultural purposes.

2. In order to appreciate the contentions raised before us it is necessary to set out a few facts. The petitioner was a resident of the State of Rajkot and at an auction effected by the State he acquired on or about September 22, 1938. agricultural land bearing survey No. 417 which in all measured about 12 acres and 12 gunthas. After some acquisitions by the State out of this survey number he was left with 2 acres and 10 gunthas of agricultural land. On October 20, 1958, the petitioner applied to the Collector for permission to convert this land to non-agricultural use, u/s 65 of the Bombay Land Revenue Code, 1879, hereinafter referred to as the Code. This

petition was first rejected by the Collector, but the Divisional Commissioner remanded the matter to the Collector. On remand, the then Collector of Rajkot, after holding- an enquiry, granted permission to the petitioner to use the land for non-agricultural use by his order dated July 2, 1960. Pursuant to this order a sanad was issued by the Collector to the petitioner on July 27, 1960. In appears that the sanad was amended on November 3, 1960 and December 1, 1960. The sanad was in form Ml and a number of conditions were appended to the sanad. Condition 6 of the main sanad provided that "save as herein provided, the grant shall be subject to the provisions of the said code". The special conditions originally included a condition that the land shall be used exclusively for constructing residential houses (condition 5) but this condition was altered in November, 1960.

3. It appears that the Municipal Committee of Rajkot had objected to the grant of permission before the Collector when a sketch of the land was sent to the Municipality. The objections as they appear from the order of the Collector granting the sanad were directed against the accuracy of the sketch, showing the northern and the western corners of the Ramkrishna Ashram, and regarding the boundaries and situation of the roads in survey Nos. 417 and 418. The Collector had overruled these objections.

4. The Municipal Committee approached the Commissioner to exercise powers u/s 211 of the Code. The Commissioner noted the objections of the Municipality and after reciting the objections and the arguments of the learned Counsel for the petitioner and after inspecting" the site, observed:

From this inspection the contentions of the Municipality as to the existence of the various roads as well as the nature of the Kharaba land has been proved beyond doubt.

In light of the above arguments as well as the site inspection and the papers of the case, I set aside the order of the Collector granting N. A. Permission. I consider, on weighing all evidence cited above, that the land docs not belong to Shri Raghav Natha.

It is this order which has been quashed by the High Court.

5. The following grounds were urged before the learned Judge:

(1) The Commissioner or the State Government had no authority u/s 211 of the Code to revise the order of the Collector so as to affect the agreement or sanad granted to him.

(2) The Commissioner''s order is not a speaking order as no reasons are given by him for setting aside the Collector''s order and, therefore, it should be quashed.

(3) The question of title to the land was not in controversy at all before the Collector and, therefore, it was not open to the Commissioner to permit the Municipality to

agitate that question and the Commissioner had no jurisdiction to decide that question.

(4) In case the above points are not accepted, the order of the Commissioner is bad even on merits as the Commissioner had erred in law in allowing the questions to be agitated before him which were not agitated before the Collector and which involved considerations which were completely foreign to those which were actually before the Collector.

6. While dealing with ground No. 1 the learned Judge held that the Commissioner had no jurisdiction to pass an order which would nullify the sanad, and that the sanad was binding on both the parties till it was set aside in due course of law. On the second ground he held that there was some force in the submission. But he observed.

But at the same time if I had to decide this case on this contention raised, I may not have interfered only on this ground, with the decision of the Commissioner.

On the third ground he found that it was true that the question of title was agitated by the Municipal Committee for the first time before the Commissioner, though it was primarily for the petitioner to show that he was an occupant within the meaning of Section 65 of the Code. But then the learned Judge decided not to enter into the merits of the case as he had come to the clear conclusion that the Commissioner had no authority to pass the order that he did u/s 211 of the Code.

7. The learned Counsel for the State of Gujarat, Mr. Dhebar, challenges the decision of the High Court that the Commissioner had no jurisdiction to pass the order dated October 12, 1961. The relevant provisions of the Code and the Land Revenue Rules, 1921, hereinafter referred to as the Rules, are as follows:

The Bombay Land Revenue Code, 1879.

48. (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of the land-

(a) for the purpose of agriculture,

(b) for the purpose of building, and

(c) for a purpose other than agriculture or building.

(2) 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.

(3) Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

(4) The Collector or a survey officer may, subject to any rules made in this behalf u/s 214, prohibit the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose.

65. 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 erect farm-buildings, construct wells or tanks, or make any other improvements thereon for the better cultivation of the land, or its more convenient use for the purpose aforesaid.

But, if any occupant wishes to use his holding or any part thereof for any other purpose the Collector''s permission shall in the first place be applied for by the occupant.

The Collector, on receipt of such application,

(a) shall send to the applicant a written acknowledgment of its receipt and

(b) may, after due inquiry, either grant or refuse the permission applied for:

Provided that, where the Collector fails to inform the applicant of his decision on the application within a period of three months, the permission applied for shall be deemed to have been granted; such period shall, if the Collector sends a written acknowledgment within seven days from the date of receipt of the application, be reckoned from the date of the acknowledgment, but in any other case it shall be reckoned from the date of receipt of the application.

Unless the Collector shall in particular instances otherwise direct, no such application shall be recognized except it be made by the occupant.

When any such land is thus permitted to be used for any purpose unconnected with agriculture it shall be lawful for the Collector, subject to the general order of the State Government, to require the payment of a fine in addition to any new assessment which maybe leviable under the provisions of section 48.

66. 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.

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.

67. Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid on such terms or conditions as may be prescribed by the Collector, subject to any rules made in this behalf by the Provincial Government.

Land Revenue Rules, 1921,

87. (a) Revision of non-agricultural assessment-...

(b) When land which is used for non-agricultural purposes is assessed under the provisions of rules 81 to 85, a sanad shall be granted in the Form M if the land is used for building purposes, in Form NI if the land is used temporarily for non-agricultural purpose other than building and in Form N in all other cases.

Provided that if the land to be used for building purposes is situated within the limits of a municipal corporation constituted under the Bombay Municipal Corporation Act or the Bombay Provincial Municipal Corporation Act, 1949, the Sanad shall be granted in Form M-I ...

8. The relevant extracts from the agreement (sanad) are given below:

Whereas application has been made to the Collector (hereinafter referred to as the Collector which expression shall include any officer whom the Collector shall appoint to exercise and perform his powers and duties under this grant) u/s 65 of the Bombay Land Revenue Code 1870 (hereinafter referred to as ''the said Code'' which expression shall where the context so admits include the rules and orders there under)by inhabitant of Madhya Saurashtra being the registered occupant of survey No. 417 in the village of in the Taluka (hereinafter referred to as ''the applicant'' (which expression shall where the context so admits include his heirs, executors, administrators and assigns) for permission to use for building purposes the plot of land (hereinafter referred to as the ''said plot''), described in the first schedule hereto and indicated by the letters .....on the site plan annexed hereto, forming part of survey No. 417 and measuring acres 2 gunthas 17, be the same a little more or less.

When used under rule 51 for land already occupied for agricultural purposes within certain surveyed cities the period for which the assessment is leviable will be ordered to coincide with the expiry of 99 years'' period running in that city.

Now this is to certify that permission to use for building purposes, the said plot is hereby granted subject to the provisions of the said code, and on the following conditions, namely:-

(1) Assessment ...

(6) Code provisions applicable ;-Save except as herein provided, the grant shall be subject to the provisions of this code : ...

In witness whereof the Collector of has set his hand and the seal of his office on behalf of the Governor of Bombay, and the applicant has also hereunto set his hand, this day the of 19 .

Signature of Applicant Signatures and designations of witnesses.

Signature of Collector Signatures and designations of witnesses.

We declare that who has signed this notice is, to our personal knowledge, the person he represents himself to be, and that he has affixed his signature hereunto in our presence.

9. It will be noticed that application is made u/s 65 of the Code and it is u/s 65 that the Collector either grants or refuses the permission applied for. It will be further noticed that if the Collector fails to inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted, but if the Collector sends a written acknowledgment within seven days from the date of receipt of the application then the three months period is reckoned from the date of acknowledgment, and in other cases this period is reckoned from the date of receipt of the application. The Collector having given permission u/s 65 he can prescribe conditions u/s 67 of the Code. u/s 48(2) where the land assessed for use, say for agricultural purposes, is used for industrial purposes, the assessment is 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. The rates for non-agricultural assessment are fixed under Rules 81, 82, 82A, 82AA, 84 and 85 of the Rules. Rule 87 (b) provides that where land is assessed under the provisions of Rules 81 to 85, a sanad shall be granted. Under the proviso to Rule 87 (b) it is obligatory for the sanad to be granted in form NI.

10. Relying on Shri Mithoo Shahani v. Union of India [1964] 1 S.C.R. 103 the learned Counsel contends that there is a distinction between an order granting permission u/s 65 and the agreement contained in the sanad which is issued under Rule 87 (b). He urges that even if the sanad may not be revisable u/s 211 of the Code, the order granting permission u/s 65 is revisable u/s 211, and if this order is revised the sanad falls along with the order.

11. We need not give our views on this alleged distinction for two reasons; first, that this point was not debated before the High Court in this case or in earlier cases The Government of the Province of Bombay v. Hormusji Manakji, (1940) Letters Patent Appeal No. 40 of 1938, decided on August 8, 1940, and secondly, because we have come to the conclusion that the order of the Commissioner must be quashed on other grounds.

12. Section 211 reads thus:

211. The State Government and any revenue officer, not inferior in Tank to an Assistant or Deputy Collector or a Superintendent of Survey, in their respective departments may, call for and examine the. record of any inquiry or the proceedings of any subordinate revenue officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and as to the regularity of the proceedings of such officer.

The following officers may in the same manner call for and examine the proceedings of any officer subordinate to them in any matter in which neither a formal nor a summary inquiry has been held, namely, ... a Mamlatdar, a Mahalkari, an Assistant Superintendent of Survey and an Assistant Settlement Officer.

If in any case it shall appear to the State Government, or to such Officer aforesaid, that any decision or order or proceedings so called for should be modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit;

Provided that an Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

13. The question arises whether the Commissioner can revise an order made u/s 65 at any time. It is true that there is no period of limitation prescribed u/s 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.

14. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act u/s 211. u/s 65 of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the Legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case the Commissioner set aside the order of the Collector on October 12, 1961, i.e., more than a year after the order, and it seems to us that this order was passed too late.

15. We are also of the opinion that the order of the Commissioner should be quashed on the ground that he did not give any reasons for his conclusions. We have already extracted the passage above which shows that after reciting the various contentions he baldly stated his conclusions without disclosing his reasons. In a matter of this kind the Commissioner should indicate his reasons, however

briefly, so that an aggrieved party may carry the matter further if so advised.

16. We are also of the opinion that the Commissioner should not have gone into the question of title. It seems to us that when the title of an occupant is disputed by any party before the Collector or the Commissioner and the dispute is serious the appropriate course for the Collector or the Commissioner would be to refer the parties to a competent, Court and not to decide the question of title himself against the occupant.

17. In the result the appeal is dismissed with costs. Appeal dismissed.