HIGH COURT OF GUJARAT *(D.B.)*

DIGVIJAYSINHJI SALT WORKS LIMITED
V/S
STATE OF GUJARAT

Date of Decision: 10 March 1969

Citation: 1969 LawSuit(Guj) 17

Hon'ble Judges: P N Bhagwati, N K Vakil

Eq. Citations: 1970 GLR 249

Case Type: Special Civil Application; Special Civil Application

Case No: 850 of 1964; 1467 of 1968

Head Note:

Levy of less under S.7 - levy as surcharge on use of non - agricultural purposes - Land held on lease to pay flat rents - No liability of revenue assessment on the land - Lands thus exempted from payment of land revenue under special contract - cess of in shape of tax can not be levied.

The Gujarat Education Cess Act 1962 provides for the creation of a fund for the promotion of education in the State of Gujarat and for the levy of education cess for the purpose. The education cess under clause (a) of sec. 3 consists of a surcharge on all lands except lands within a village site, which are customarily exempt from land revenue, and this surcharge is to be levied and collected in accordance with the provisions of the Education Cess Act. Sec. 7 provides for levy of surcharge on land used for non-agricultural purposes and it was under this section that the Government claimed to charge education cess from the petitioners in respect of the land leased to them. (Para 2). Held that the fixation of assessment of land revenue is a function entrusted to the Collector and the Collector fixes it at his discretion subject to the Land Revenue Rules in exercise

of the statutory power conferred upon him under the Bombay Land Revenue Code. The rent payable by a tenant to the Government under a lease is on the other hand a matter of contract between the tenant and the Government. When rent is agreed upon between the tenant and the Government it is a bilateral transaction resulting from consensus between the parties unlike fixation of assessment, which is an exercise of statutory power by the Collector. The concept of rent payable under a lease is entirely different from that of assessment fixed under the provisions of the Code and the Land Revenue Rules. In the Bombay Land Revenue Rules the Government itself has made a distinction between rent and assessment. There is therefore a clear distinction running throughout the Code and the Land Revenue Rules between the rent payable by a tenant to the Government under the lease and the assessment of land revenue fixed by the Collector under the provisions of the Code and the Land Revenue Rules. It is undoubtedly true that a tenant holding under a lease from the Government is not a tenant within the meaning of sec. 3(xiv) and he is therefore not excluded from the definition of occupant under sec. 3(xvi) and being an occupant he would be liable to pay land revenue to the Government unless the land held by him as tenant is wholly exempted from payment of land revenue. But the rent payable by him to the Government under the lease cannot possibly be regarded as non-agricultural assessment levied under the Land Revenue Code. This clearly shows that the rent payable by the tenant to the Government under the lease cannot be equated with assessment of land revenue under the provisions of the Land Revenue Code and the Land Revenue Rules. (Paras 7 and 8). It is only when assessment of land revenue is fixed by the Collector in accordance with the provisions of secs. 48 and 52 and the relevant rules that land revenue can be said to be levied on the land. Moreover sec. 7 itself draws a distinction between the words levied and leviable. Since there would be no assessment of land revenue in respect of alienated lands sec. 7 does not use the expression the amount of non-agricultural assessment levied as in the case of unalienated lands but uses the words the amount of non-agricultural assessment which would have been leviable had there been no alienation of land revenue. It is therefore clear that non-agricultural assessment could not be said to be levied on the lands leased to the petitioners and sec. 7 was not attracted. (Para 10). Further held that it was plain on a reading of the clauses of the indentures of lease and particularly the opening part that the only terms and conditions on which the petitioners were entitled to hold the lands leased to them by the Government were those contained in the respective indentures of lease and nothing further was

payable by them to the Government as a condition of holding the lands leased to them and the lands leased to them were therefore exempt from payment of land revenue under the special contract contained in the respective indentures. The demand made by the respondents for education cess in the shape of surcharge on the lands leased to the petitioners must therefore be held to be unwarranted and unjustified. (Para 10). Secretary of State v. Gordhandas referred to.

Acts Referred:

Bombay Land Revenue Code, 1879 Sec 52, Sec 48

Gujarat Education Cess Act, 1962 Sec 7, Sec 3

Final Decision: Petition allowed

Advocates: I M Nanavati, J R Nanavati,K S Nanavati, J R Nanavati, Poornanand & Company

Reference Cases:

Cases Cited in (+): **1**

Cases Referred in (+): **1**

Judgement Text:-

Bhagwati C J

[1] These two petitions raise a short question of law relating to the interpretation of sec. 7 of the Gujarat Education Cess Act, 1962. The facts giving rise to these two petitions are similar and it will therefore be sufficient if we state the facts of the first petition, namely, Special Civil Application No. 850 of 1964 and indicate only the points of difference so far as the second petition, namely, Special Civil Application No. 1467 of 1968, is concerned. The petitioner in Special Civil Application No. 850 of 1964 is a limited liability company engaged in the manufacture of salt at Jamnagar. By an Indenture of Lease dated 29th April 1960 executed by and between the Governor of Bombay and the petitioner, the Government of Bombay leased to the petitioner for a period of twenty-five years commencing from 2nd June 1956, a piece of land admeasuring 1454 acres 22 gunthas situate in Bedi Port, Taluka Jamnagar, District Jamnagar. The Indenture of Lease provided :

"... in consideration of the rents and royalties covenants and agreements by and in these presents reserved and contained and on the part of the lesSec to be paid, observed and performed the lessor both hereby demise unto the lesSec the land measuring 1454 acres 22 gunthas situated at Bedi Bunder of Taluka Jamnagar as described and delineated in the plan, hereto annexed and therein surrounded by red boundary line (hereinafter called the 'said lands", to hold for a period of 25 (twenty-five) years commencing from 2nd June 1956 and ending on 1st June 1981 for the purposes and subject to the terms and conditions set forth."

In the Indenture of Lease. The land was taken by the petitioner on lease for manufacture, storage and sale of salt and its bye-products and for work connected therewith. The Indenture of Lease did not contain any clause providing for payment of assessment to the Government and the only provision was that set out in clause 6 which provided that the petitioner shall pay to the Government of Bombay from 2nd June 1956, during the subsistence of the lease annual rent at the rate of Rs. 21- per acre or part of an acre of the land leased as also royalty at the rate of Re. II- per ton of the salt manufactured by the petitioner. Clause 20 of the Indenture of Lease declared that "subject to the foregoing conditions" the petitioner shall continue to enjoy the land undisturbed for the term of twenty-five years. Pursuant to the Indenture of Lease the petitioner entered into possession of the land and started manufacturing, storing and selling salt on the land and there is no dispute that he regularly paid the annual rent at the rate of Re. 21- per acre and royalty at the rate of Re. II- per ton as provided in clause 6 of the Indenture of Lease.

[2] On 9th October 1962 the Legislature of the State of Gujarat enacted an Act called the Gujarat Education Cess Act, 1962 (hereinafter referred to as the Education Cess Act) to provide for the creation of a fund for the promotion of education in the State of Gujarat and for the levy of education cess for the purpose. Sec. 3 of this Act provided:

"3. For the purpose of providing for the cost of promoting education in the State of Gujarat, there shall be levied and collected in accordance with the provisions of this Act an education cess which shall consist of-

(a) a surcharge on all lands except lands which are within a village site and not assessed to land revenue;

(b)a tax on lands and buildings in urban areas."

The land leased to the petitioner was not situate in an urban area and clause (b) of sec. 3 was therefore clearly not applicable and education cess, if at all, could be levied on the leased land only under clause (a) of sec. 3. The education cess under clause (a) of sec. 3 consisted of a surcharge on all lands except lands within a village site which are customarily exempt from land revenue and this surcharge was to be levied and collected "in accordance with the provisions" of the Education Cess Act. Secs. 5 and 6 provided for levy of surcharge on agricultural lands but we are not concerned with those sections since the land leased to the petitioner was admittedly land used for non-agricultural purposes. Sec. 7 is the material section, for it provided for levy of surcharge on land used for non-agricultural purposes and it was under this section that the Government claimed to charge education cess from the petitioner in respect of the land leased to it. That section was in the following terms:

"7. (1) Notwithstanding any usage, custom or settlement or anything contained in any agreement, sanad or order or a decree or order of a Court or any law for the time being in force, on all unalienated lands on which non-agricultural assessment is levied under the relevant Code and on all alienated lands (except lands included within a village site) which are used, or may hereafter be used, for a purpose unconnected with agriculture there shall be levied and collected a surcharge at the rate of-

(i) 12. 50 per cent of the amount of non-agricultural assessment so levied or as the case may be which would have been leviable had there been no alienation of land revenue, if the land be used for a residential purpose or for a village industry or for any purpose other than trade, commerce or industry or the carrying on of a profession or business and be situated in an area where the rates of non-agricultural assessment under the relevant Code

have been fixed or revised within three years immediately preceding the 1st day of August 1962;

(11)-

(iii) 50 per cent of the amount of non-agricultural assessment so levied or leviable, where the land is used for any industry other than a village industry;

(IV)

(2)...

The Government Secking to rely on sec. 7(1)(iii) issued a notice dated 6th August 1964 to the petitioner stating that under this provision the petitioner was liable to pay education cess on annual rent of the land leased to the petitioner and requiring the petitioner to deposit the amount of eduction cess calculated on this basis for a period of two years from 1st August 1962 to 31st July 1964. The petitioner by its letter dated 11th August 1964 disputed the validity of the claim made by the Government for education cess and pointed out that under the Indenture of Lease the only liability of the petitioner was to pay annual rent at the rate of Rs. 21- per acre and there was no mention of any liability for payment of non-agricultural assessment. The Government however persisted in the demand made by it and a letter dated 13th August 1964 was addressed by the Mamlatdar calling upon the petitioner to pay up the amount of education cess and stating that if it was not so paid, the Government would proceed to recover it as arrears of land revenue. The petitioner thereupon preferred Special Civil Application No. 850 of 1964, challenging the right of the Government to claim education cess from the petitioner.

[3] The first petitioner in Special Civil Application No. 1467 of 1968 is a partnership firm of which the second petitioner is one of the partners. Two pieces of land situate in village Chudeshwar, Taluka Khambhalia, District Jamnagar, one admeasuring 1672 acres 17 gunthas and the other admeasuring 6 acres 22 gunthas, were leased by the

Government of Gujarat to the first petitioner for manufacture, storage and sale of salt and its bye-products under separate Indentures of Lease executed respectively on 28th February 1963 and 24th July 1964. The terms and conditions of these Indentures of Lease were substantially the same as the terms and conditions of the Indenture of Lease in the previous case with only this difference that clause 20 of the latter Indenture of Lease was absent in the former Indentures of Lease, the annual rent payable at the rate of Re. 21- per acre was described not simply as "rent" but as "ground rent" and there was clause 23 which read as follows:

> "23. Government has under consideration the question of accepting a uniform patern of levy of charges such as ground rent, non-agricultural assessment and royalty payable by the leSecs of salt lands in this State. Such charges will be levied from this Company also for the land leased to it with retrospective effect from the date of execution of agreement for this lease, and if and when Government adopts such common pettern. "

> Here also the Government purporting to rely on sec. 7(1)(iii) claimed to recover education cess from the first petitioner in respect of the lands leased to it. The petitioners therefore filed Special Civil Application No. 1467 of 1968 challenging the right of the Government to levy education cess on the lands leased to the first petitioner.

[4] It was common ground between the parties, and indeed it could not be otherwise, that the lands leased to the petitioners in both the petitions were unalienated lands. Education cess in the shape of surcharge could therefore be levied and collected on the lands leased to the petitioners only if it could be shown that they were lands on which non-agricultural assessment was levied under the Bombay Land Revenue Code, that being the relevant Code within the meaning of sec. 2(ix) of the Education Cess Act. The respondents contended that the lands leased to the petitioners fell within this description and they sought to rest this contention on a two-fold argument. The first argument was that the annual ground rent at the rate of Rs. 21- per acre payable by the petitioners to the Government under the respective Indentures of Lease represented non-agricultural assessment levied under the Bombay Land Revenue Code and since the cases of the petitioners were covered by clause (iii) of sec. 7 sub-sec. (1), the Government was entitled to levy and collect surcharge on the lands leased to the petitioners at the rate of fifty per cent of the amount of the annual ground rent, that being the amount of non-

agricultural assessment levied on the lands leased to the petitioners. This was in fact the basis on which the surcharge was claimed by the Government from the petitioners. The second argument of the respondents was-and that was an argument advanced in the alternative that even if the annual ground rent calculated at the rate of Rs. 21- per acre did not represent non-agricultural assessment levied under the Bombay Land Revenue Code and surcharge was therefore not claimable on the basis of fifty per cent of the amount of annual ground rent, the lands leased to the petitioners were liable to payment of land revenue to the Government under sec. 45 of the Bombay Land Revenue Code and the charge to payment of land revenue being thus imposed, non-agricultural assessment could be said to be levied on the lands leased to the petitioners even though quantification of such assessment was not made under the provisions of the Bombay Land Revenue Code and the condition attracting the applicability of the surcharge was therefore satisfied and the Government could claim surcharge at the rate of fifty per cent of the amount of non-agricultural assessment when quantified. Both these arguments are in our opinion without substance and the contention based on them must fail. Our reasons for saying so are as follows.

[5] The question which arises for consideration under the first argument is whether the annual ground rent of Rs. 21- per acre payable by the petitioners to the Government under the respective Indentures of Lease could be said to be non-agricultural assessment levied under the Bombay Land Revenue Code. The contention of the respondents was that though the words used to describe this payment was "rent", it was really "land revenue" levied in respect of the lands leased to the petitioners and in support of this contention they sought to rely on the definition of "land revenue" in the Bombay City Land Revenue Act, 1876 and the Bombay Revenue Jurisdiction Act, 1876 but we do not Sec how these definitions, wide though they are, help the respondents. These definitions give meaning to the words "land revenue" as used in the two respective statutes and they cannot be employed for the purpose of interpreting a provision contained in a totally different statute. Moreover, it may be noticed that the provision which requires to be construed by us does not use the words "land revenue" and there can therefore be no question of importing even by analogy the definitions of those words in other statutes. The respondents also relied on the observations of Madgavker J. in Secretary of State v. Gordhandas, A. I. R. 1931 Bom. 464 where it has been stated by the learned Judge "Taking it in its plain meaning, land revenue must be taken to mean money payable to Government in respect of land. " But these observations also do not assist for the question before us is not what is "Land Revenue" but what is the true import of the expression "lands on which non-agricultural

assessment is levied under the relevant Code" and particularly the underlined words. To arrive at a true meaning of this expression we will have to turn to the relevant provisions of the Bombay Land Revenue Code and the rules made under that Code.

[6] All land, whether applied to agricultural or other purposes and wherever situate, is declared by sec. 45 of the Bombay Land Revenue Code to be liable to payment to land revenue to the Government according to the rules enacted under the Code except such as may be wholly exempted under the provisions of any special contract with the Government or any law for the time being in force. Land revenue is therefore leviable on every land whether applied to agricultural or other purposes and wherever situate unless of course it is wholly exempted from the payment of land revenue. Now where land revenue is leviable on any land, how is it to be levied ? The answer is given by Secs. 48 and 52. Sec. 48 says that the land revenue leviable on any land under the provisions of the Code shall be assessed with reference to the use of the land which may be for the purpose of agriculture or for the purpose of building or for a purpose other than agriculture or building and if land assessed for use for any purpose is used for any other purpose, the assessment upon such land shall be liable to be altered and fixed at a different rate by the prescribed authority. Sec. 52 lays down the mode of fixing the assessment of land revenue and it says :

> "52. (1) On all lands which are not wholly exempt from the payment of land revenue and on which the assessment has not been fixed under the provisions of Chapter VIIIA the assessment of the amount to be paid as land revenue shall, subject to rules made in this behalf under sec. 214, be fixed at the discretion of the Collector, for such period not exceeding ninety-nine years as he may be authorised to prescribe, and the amounts due according to such assessment shall be levied on all such lands.
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> Chapter VIIIA applies only to assessment of land revenue of agricultural land and it can therefore have no application where, as in the present case, land is used for a non-agricultural purpose. The assessment of land revenue on non-agricultural land can therefore be fixed only by the Collector at his discretion subject to rules made under sec. 214 and the amount due according to such assessment is levied on such land. The rules made under sec. 214 are called the Land Revenue Rules, 1921. Chapter XIV of the Rules provides for imposition and revision of non-agricultural assessment and rule 81 in that Chapter deals with the ordinary rates of non-agricultural

assessment. Clauses (1) and (2) of this rule which are the only clauses relevant for the purpose of the present petitions provide :

"81. Ordinary rates of non-agricultural assessment.

(1)For the purpose of determining generally the rate of non-agricultural assessment leviable, the Collector shall subject to the approval of the Divisional Officer from time to time, by notification published in the Official Gazette, divide the villages, towns and cities in his district (to which a standard rate under Rule 82 has not been extended) into two classes.

(2) The assessment shall then be fixed by the Collector at his discretion subject to the general or special orders of the Provincial Government at a sum per square yard within the following limits:

Maximum... For Class I land 2 pies For Class II land 1 pie.

Minimum... The agricultural assessment.

In fixing the rate within the above limits due regard shall be had to the general level of the value of lands in the locality used for non-agricultural purposes. "

This is the procedure which has to be followed by the Collector for the purpose of fixing non-agricultural assessment on land used for non-agricultural assessment.

[7] It is apparent that the fixation of assessment of land revenue is a function entrusted to the Collector and the Collector fixes it at his discretion subject to the Land Revenue Rules in exercise of the statutory power conferred upon him under the Code. The rent payable by a tenant to the Government under a lease is, on the other hand, a matter of contract between the tenant and the Government. When rent is agreed upon between the tenant and the Government, it is a bilateral transaction resulting from consensus

between the parties unlike fixation of assessment which is an exercise of statutory power by the Collector. The concept of rent payable under a lease is entirely different from that of assessment fixed under the provisions of the Code and the Land Revenue Rules. As a matter of fact, when we turn to the Land Revenue Rules we find that the Government itself has made a distinction between rent and assessment. Form C-II which is a standard form of reclamation lease given in the Forms annexed to the Land Revenue Rules draws a distinction between rent and assessment and so does Form H which is an alternative form of agreement to be passed by persons intending to become occupants. Clause 23 of the Indentures of Lease in Special Civil Application No. 1467 of 1968 also recognises the distinction between "ground rent" and "non-agricultural assessment" and does not equate the ground rent of Rs. 2/ - per acre per annum with non-agricultural assessment. There is therefore a clear distinction running throughout the Code and the Land Revenue Rules between rent payable by a tenant to the Government under the lease and assessment of land revenue fixed by the Collector under the provisions of the Code and the Land Revenue Rules. It is undoubtedly true that a tenant holding under a lease from the Government is not a "tenant" within the meaning of sec. 3(xiv) and he is therefore not excluded from the definition of "occupant" under sec. 3(xvi) and being an occupant he would be liable to pay land revenue to the Government unless the land held by him as tenant is wholly exempted from payment of land revenue. But the rent payable by him to the Government under the lease cannot possibly be regarded as non-agricultural assessment levied under the Code.

[8] Some reliance was placed on behalf of the respondents on sec. 68 but we do not Sec how that section helps the argument of the respondents: on the contrary it exposes the fallacy of that argument. Sec. 68 says that an occupant is entitled to the use and occupation of his land for the period, if any, to which his tenure is limited, or if the period is unlimited, then in perpetuity conditionally on payment of the amount due on account of land revenue for the same according to the provisions of the Code or of any rules made under the Code or of any other law for the time being in force. Granting that a tenant is an occupant, he would be entitled to use and occupation of the land leased to him for the period of the lease on condition of payment of the amount due on account of land revenue, whether such amount is due according to the provisions of the Code and the Land Revenue Rules or of any other law for the time being in force. Now if rent payable by the tenant to the Government were to be regarded as an amount due on account of land revenue either according to the provisions of the Code and the Land Revenue Rules or under the law of contract on the basis that it is the law of contract which gives efficacy to the contract between the tenant and the Government, the result

would be that as soon as the tenant fails to make payment of the amount of the rent on the due date, his right to the use and occupation of the land would come to an end and he would be liable to be summarily evicted by the Collector under sec. 79 A even without any notice of termination of tenancy or forfeiture of the lease by the Government in accordance with any provision in that behalf contained in the lease. This clearly shows that the rent payable by the tenant to the Government under the lease cannot be equated with assessment of land revenue under the provisions of the Code and the Land Revenue Rules.

[9] It is therefore evident that the annual ground rent of Rs. 2/- per acre payable by the petitioner to the Government under the respective Indentures of Lease could not be regarded as non-agricultural assessment levied under the provisions of the Code. It was not fixed by the Collector at his discretion in accordance with the Land Revenue Rules in exercise of the statutory power vested in him. It was the result of a contract between the petitioners and the Government and though undoubtedly the Collector executed the Indentures of Lease on behalf of the Government, it was the Government as owner of the lands and not the Collector in exercise of his statutory power under the Code, that agreed upon the rent with the petitioners. Moreover it may be pointed out that the consideration for the lease was not only the annual ground rent of Rs. 2/- per acre but also the royalty at the rate of Re. 1I- per ton, one being a sum certain and the other being a variable amount depending on the quantity of salt manufactured on the lands. If this entire amount constituted a composite consideration for the lease, it is difficult to Sec on what basis a part of it consisting of the annual ground rent of Rs. 2/- per acre could be regarded as non-agricultural assessment levied under the provisions of the Code. The claim of the Government to charge education cess to the petitioners on the basis that the annual ground rent of Rs. 2/- per acre represented non-agricultural assessment levied under the provisions of the Code is therefore clearly unsustainable and must be rejected.

[10] That takes us to the second argument urged on behalf of the respondents, namely, that in any event, non-agricultural assessment must be held to be levied on the lands leased to the petitioners since the said lands were liable to payment of land revenue under sec. 45 and the charge to payment of land revenue was levied on the said lands by that section. It was no doubt true, said the respondents, that the actual quantum of non-agricultural assessment was not determined by the Collector by following the procedure set out in Secs. 48 and 52" and Rule 81 but the levy of non-agricultural assessment was already made by sec. 45 and the condition requisite for attracting the

applicability of sec. 7 was therefore satisfied. This argument fails to notice the distinction between "leviable" and "levied". What sec. 7 requires is that non-agricultural assessment must be "levied" under the provisions of the Code. It is not enough that non-agricultural assessment must be "leviable" on the land. Sec. 45 declares the liability of every land, other than one which is wholly exempted, to the payment of land revenue. Land revenue is therefore leviable on every land which is not wholly exempted but how it is to be levied or assessed is provided in Secs. 48 and 52 and amongst other rules: Rule 81. It is only when assessment of land revenue is fixed by the Collector in accordance with the provisions of Secs. 48 and 52 and the relevant rules that land revenue can be said to be levied on the land. The opening words of sec. 45 are very significant in this respect. They provide that land revenue leviable on any land under the provisions of the Code shall be assessed with reference to the use of the land. Moreover if there is assessment of the land revenue made by the Collector under the provisions of the Code, it is not possible to say what is the amount of land revenue payable to the Government in respect of the land and in that event, how can surcharge which is based on a certain percentage of the amount of non-agricultural assessment be determined ? It is significant to note that so far as sec. 5 which deals with surcharge on agricultural lands is concerned, there is a proviso to sub-sec. (1) of that section which provides for levy of surcharge even in respect of land which is wholly or partially exempt from payment of land revenue or which is liable to payment of land revenue but is unassessed while no such proviso is to be found in sec. 7. Moreover, sec. 7 itself draws a distinction between the words "levied" and "leviable". Since there would be no assessment of land revenue in respect of alienated lands, sec. 7 does not use the expression "the amount of non-agricultural assessment, levied" as in the case of unalienated lands but uses the words "the amount of non-agricultural assessment.....which would have been leviable had there been no alienation of land revenue". It is therefore clear that non-agricultural assessment could not be said to be levied on the lands leased to the petitioners and sec. 7 was not attracted. In fact, it is plain on a reading of the clauses of the Indentures of Lease and particularly the opening part that the only terms and conditions on which the petitioners were entitled to hold the lands leased to them by the Government were those contained in the respective Indentures of Lease and nothing further was payable by them to the Government as a condition of holding the lands leased to them and the lands leased to them were therefore exempt from payment of land revenue under the special contract contained in the 'respective Indentures of Lease. The demand made by the respondents for education cess in the shape of surcharge on the lands leased to the petitioners must therefore be held to be unwarranted and unjustified.

[11] In the result, we allow both the petitions and make the rule issued in each petition absolute by issuing a writ of mandamus quashing and setting aside the impugned notices claiming education cess from the petitioners in respect of the lands leased to them under the respective indentures of Lease. The respondents will pay the costs of each petition to the petitioners.

Petitions allowed.