Sayed Rehmanmiya Mustafamiya and Others

Vs

The State of Gujarat and Others

Civil Appeal Nos. 2468 and 2470 of 1966

(V. Bhargava, K.S. Hegde JJ)

02.12.1969

JUDGMENT

BHARGAVA, J. -

1. The appellants in all these appeals were holders of Barkhali tenure in two villages situated in the State of Gujarat in areas which were formerly part of the Part B State of Saurashtra until Saurashtra was merged in the State of Bombay. When the State of Saurashtra was formed, it included areas which were ruled by the Indian Princes in which the tenure systems were different from the systems in British India. In 1948, by Ordinance XXV of 1948 issued by the Raj Pramukh, a number of Acts in force in the Province of Bombay were applied to the State of Saurashtra. That Ordinance was amended by Ordinance XXXIX of 1948. The effect of this amendment was that, under the amended Ordinance XXV of 1948, the Bombay Land Revenue Code V of 1879 (hereinafter referred to as "the Code") with certain adaptations and modifications became applicable to Saurashtra. The main modifications, with which we are concerned, are that Chapters VIII and VIII-A of the Code were not applicable to the State of Saurashtra and Section 52 was made applicable, subject to the omission of the reference to Chapter VIII-A in that section. There was a further amendment of Ordinance XXV of 1948 by Ordinance LXIV of 1949 the result of which was that entry relating to Section 52 of the Code in Ordinance XXV of 1948 was omitted. The consequence of this omission was that Section 52 became applicable to the State of Saurashtra, including the reference to Chapter VIII-A which existed in it in the original Code. Further, Ordinance XXV of 1948 was so amended that Chapters VIII and VIII-A also became applicable to the State of Saurashtra with some slight modifications. Thus, after this ordinance matters relating to land revenue in the State of Saurashtra were governed by the Bombay Code applied to that State with the modifications laid down in the two Ordinances XXXIX of 1948 and LXIV of 1949 mentioned above.

2. In this state of law, the Saurashtra Legislature passed two Acts for abolishing certain tenure rights. One was the Saurashtra Land Reforms Act No. XXV of 1951 (hereinafter referred to as "the Reforms Act") for abolition of Girasdari tenure, and the second was the Saurashtra Barkhali Abolition Act No. XXVI of 1951 (hereinafter referred to as "the Act") for abolition of Barkhali tenure. As a result of the abolition of the rights of the appellants, they became entitled to compensation under Section 18 of the Act which provided for payment of cash annuity calculated on the basis of the assessment in respect of the land in possession of the tenants of the holders of Barkhali tenure. The assessment in respect of the land, on the basis of which compensation was to be calculated and annuity paid, was defined in Section 19 of the Act which reads as follows :

> "19. For the purposes of this Act, assessment shall mean in relation to any land, until the village in which such land is situate is surveyed and settled, assessment calculated

on an arithmetic average of assessment leviable in the surrounding and adjoining Khalsa or assessed non-Khalsa lands or villages.

(2) For the purpose of determining the assessment on any land, the Mamlatdar may hold an inquiry in the prescribed manner and fix the assessment on such land, and the assessment so determined shall be published in such manner as may be prescribed :

Provided that where the assessment so calculated is manifestly unfair, the Government may modify it keeping in view the above principle."

In pursuance of the power given to the Mamlatdar under Section 19(2), read with Section 19 (1) of the Act, the Mamlatdar determined the assessment in accordance with the principle laid down is Section 19(1), and the initial payment as well as some instalments of the annuity were paid to the appellants on the basis of the assessment so determined. In 1959, however, the Government amended the Saurashtra Land Revenue Rules framed under the Code as it had been adapted and applied to Saurashtra area and substituted Rule 17 for the existing Rule 17 as it had been inserted in 1957. This Rule 17 laid down the procedure for the assessment of the amount to be paid as land revenue on all lands in Saurashtra which were not wholly exempt from payment of land revenue and on which the assessment had not been fixed under the provisions of Chapter VIII-A. This Rule, thus, laid down the method to be adopted by the Collector for fixing the assessment under Section 52 of the Code. This amended Rule 17 was brought into force on the 20th May, 1959 and, in pursuance of this Rule, the Collector determined the assessment payable, inter alia, on the lands which were held under Barkhali tenure by the appellants. Consequent on this assessments by the Collector under Section 52 of the Code, the Government started paying annuity under Section 18 of the Act to the appellants on the basis of this assessment instead of continuing payment on the basis of the assessment which had been made by the Mamlatdar under Section 19 of the Act. This was challenged by the appellants in the High Court of Gujarat, but unsuccessfully. Consequently, the appellants have come up to this Court in these appeals on the basis of certificate of fitness granted by the High Court under Article 133(1) (c) of the Constitution.

3. In the High Court, various grounds were taken for challenging the validity of the action of the Government in paying annuity on the basis of the Collector's assessment under Section 52 of the Code read with Rule 17 of the Rules and it was urged that the appellants were entitled to continue to receive payment on the basis of the assessment which had been made by the Mamlatdar under Section 19 of the Act. The principal ground, which we think has considerable force, was that assessment under Section 19 of the Act has been given a special meaning, and payment has to be made in accordance with the assessment mentioned in Section 19 of the Act and not in accordance with the assessment made by the Collector under Section 52 of the Code. Under Section 19 (1) of the Act, assessment is defined to mean assessment calculated on an arithmetic average of assessment leviable in the surrounding and adjoining Khalsa or assessed non-Khalsa lands or villages which has to be determined by the Mamlatdar after holding an enquiry under Section 19(2). This meaning continues to apply "until the village in which such land is situate is surveyed and settled". The contention on behalf of the appellants was that the operations carried out by the Collector under Section 52 of the Code did not result in the villages in which the lands of the appellants are situate being surveyed and settled, even though the Collector did make an assessment under Section 52 of the Code. On the other hand, the Government applied the assessment made by the Collector under Section 52 of the Code on the basis that the words "surveyed and settled" as used in Section 19 (1) of the Act are not defined and the requirements of those words must be held to be satisfied when the Collector made the assessment under Section 52 of the Code in accordance with the principles laid

down in Rule 17 of the Rules. It was urged that the words "surveyed and settled" were not used in any technical sense and all that was required was that, in substance, there should be a survey and settlement resulting in assessment. Once that is done, the assessment made by the Mamlatdar becomes ineffective and the new assessment, which is the result of survey and settlement, takes its place for purposes of determination of the compensation playable under Section 18 of the Act.

4. It is true that the words "surveyed and settled" have not been defined in the Act; but, in clause (v) of Section 2 of the Act, it is laid down that all words and expressions used, but not defined, in the Act shall have the meanings assigned to them in the Reforms Act. Again, in Section 2(33) of the Reforms Act, it is laid down that all words and expressions used, but not defined, in that Act and defined in the Code shall have the meanings assigned to them in the Code. Since the words "surveyed and settled" were not defined in either of these two Acts, we have to look to the Code to find their meaning. In the Code, the words "survey" and "settlement" are not separately defined in Section 3 which contains the definitions, though the expression "survey settlement" is defined as including a settlement made under the provisions of Chapter VIII-A. The word "settlement" itself has been defined for the limited purpose of Chapter VIII-A in Section 117-C (1) as meaning the result of the operations conducted in a zone in order to determine the land revenue assessment. Until the year 1956, instead of the expression "a zone", the words used were "a Taluka or part of a Taluka". It will, thus, be seen that, even under the Code, the two words "survey" and "settlement was limited by laying down that this word was to connote the meaning given to it in the definition only in Chapter VIII-A. However, the procedure for survey was fully indicated in Chapter VIII, while the procedure for settlement was fully laid down in Chapter VIII-A. It was in this state of law that the Saurashtra Legislature passed the Act in 1951. It is, however, clear that, at the time when the Act was passed, the only manner of survey which was laid down by any law applicable in the State of Saurashtra was that contained in Chapter VIII of the Code and the only manner of settlement was that contained in Chapter VIII-A. There was, of course, at the same time, provision contained in Section 52 of the Code for assessment of the amount to be paid as land revenue on all lands; but, in that section, neither the words "survey" nor "settlement" or any of their derivatives was used. In the circumstances, we consider that the submission made by counsel for the appellants that the words "surveyed and settled" used in Section 19 of the Act were intended to refer to the survey and settlement under Chapters VIII and VIII-A of the Code has great force. The Legislature, in Section 19, first laid down a convenient method of assessment by the Mamlatdar by a summary procedure and that assessment was to be treated as the assessment for all purposes of the Act until the village in which the land in question may be situate is surveyed and settled. The Legislature envisaged that, in areas in which there had been no survey and settlement in accordance with Chapters VIII and VIII-A of the Code, such operations would be undertaken. But, for the intervening period, until those operations could be completed, summary power was given to the Mamlatdar to fix the assessment on the basis of the guiding principles laid down in that section. In using the expression "the village in which such land in situate is surveyed and settled", the Legislature appears to have ruled out the applicability of the assessment made by the Collector under Section 52 of the Code, because Section 52 of the Code does not anywhere envisage a survey and settlement in any of the words in that section. If the Legislature had intended that the Mamlatdar's assessment made by the summary manner laid down in Section 19 itself be superseded by any assessment made under the Code, including an assessment by the Collector under Section 52 of the Code, the language used in Section 19 would certainly have been different. Instead of saying that the assessment made by the Mamlatdar under Section 19 is to be effective until the village in which such land is situate is surveyed and settled, the Legislature could have easily laid down that assessment shall remain effective until an assessment is made under the Code. In this connection,

reference may be made to Section 16 of the Act in which the Legislature laid down what was to be the land revenue payable on all lands held, on the commencement of the Act, as Barkhali lands including Gharkhed, and land allotted under the Act. The provision made in Section 16 was that the lands were liable to payment of land revenue under the provisions of the Code and the Rules made thereunder. In that section, the Legislature did not make reference to any survey or settlement. It only laid down that the land revenue payable was to be as determined under the provisions of the Code and the Rules made thereunder. A similar provision could have been made in Section 19 for superseding the assessment made by the Mamlatdar. Instead, the requirement prescribed by the Legislature was that the assessment by the Mamlatdar was to continue in force until the village is surveyed and settled and not merely until an assessment of revenue payable in respect of the land is determined either under Section 52 of the Code or Chapter VIII-A of the Code.

5. This view of ours is further strengthened by a comparison of the language used in Section 19 of the Act and Section 52 of the Code. Section 52 of the Code envisages assessment of amount to be paid as land revenue "on all lands", while Section 19 of the Act refers to survey and settlement of "a village" and not of lands. Obviously, under Section 52 of the Code, there could be assessment of revenue on lands without survey or settlement of a village and, when the Legislature in Section 19 of the Act, used the expression "village is surveyed and settled", it clearly ruled out a mere assessment under Section 52 of the Code which need not follow a survey or settlement of a village. In our opinion, therefore, under Section 19 of the Act, the assessment made by the Mamlatdar under that section itself must continue in force until there is a survey and settlement in accordance with Chapters VIII and VIII-A of the Code.

6. In this connection, we may take notice of one more aspect. Even under Section 52 of the Code and Rule 17 of the Rules made thereunder, there is, in fact no survey at all. All that Rule 17 requires the Collector to do is to classify land into three classes : (1) dry crop, (2) rice and (3) irrigated. These three classes are then to be divided into three sub-classes, good, medium and inferior. Assessment is then to be made on each parcel of land by comparison of similar class and sub-class of land with land of the same class and sub-class situated in the Bombay area apart from areas transferred to Bombay State at the time of Reorganisation of the States in 1956. This procedure does not involve any survey. Survey, as indicated by Chapter III-A of the Land Revenue Rules framed under the Code, requires the settlement officer to examine physical configuration, climate and rainfall, markets, communications, standard of husbandry, population and supply of labour, agricultural resources, the variations in the area of occupied and cultivated lands during the period of previous settlement, wages, prices, yield of the principal crop, ordinary expenses of cultivating each crop and rental values of lands used for purposes of agriculture. No such survey of any of these factors was required to be done by the Collector when making the assessment of land revenue payable under Section 52 of the Code read with Rule 17. In fact, the provisions of Rule 17 require very limited action by the Collector in classifying lands and comparing lands to be assessed with lands in untransferred area of the Bombay State. Fixing of land revenue payable, on this principle, is also clearly exercise of a summary power which appears to have been conferred on the Collector by Section 52 as a temporary measure until there could be a proper settlement of land revenue after survey in accordance with Chapters VIII and VIII-A of the Code. If such assessment made by the Collector by a more or less summary procedure were intended to be given effect to by the Legislature in the Act, there was no need at all to create another authority in the Mamlatdar to fix assessment by a slightly different summary procedure. It seems to us that the Saurashtra Legislature in passing the Act, for the temporary period until there could be a regular survey and settlement, created a machinery by granting power to the Mamlatdar to make a summary assessment and that was clearly intended not to be superseded by another summary fixation of assessment by the

Collector under Section 52 of the Code.

7. The High Court has held that, in substance and in effect, the Collector, in acting under Section 52 of the Code and Rule 17, did make the assessment after survey and settlement. Nowhere did the High Court examine whether any of the steps which are taken in a survey were required to be taken by the Collector at all. The High Court seems to have assumed that the procedure laid down in Rule 17 amounted to survey and settlement. Further, the High Court lost sight of the fact that, under Section 52 of the Code and Rule 17, the assessment of land revenue payable was in respect of lands, while Section 19 of the Act envisaged survey and settlement not of individual lands but of a village. We are, therefore, unable to agree with the view of the High Court that what the Collector did in 1959 in making the assessment under Section 52 of the Code and Rule 17 amounted to survey and settlement of villages as envisaged in Section 19 of the Act. There having been no survey and settlement of the village, the assessment made by the Mamlatdar continued to be assessment for purposes of the Act and the Government was, therefore, no justified in varying the payment of annuity under Section 18 of the Act which should have been continued to be paid in accordance with that assessment.

8. The appeals are, consequently, allowed with costs in both Courts and the orders of the High Court are set aside. As prayed by the appellants in their writ petitions, writs of mandamus shall issue to the Government to pay cash annuity to the appellants on the basis of the assessments made by the Mamlatdar under Section 19 of the Act and not in accordance with the assessments made by the Collector under Section 52 of the Code, read with Rule 17 of the rules framed thereunder.

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