H. H. Shri Vishwesha Thirtha Swamiar & Others

Vs

The State of Mysore and Another

Civil Appeals Nos. 2222 of 1966 and Writ Petition Nos. 441-444 and 446 of 1970

(CJI Sikri, A. N. Ray, D. G. Palekar JJ)

12.08.1971

JUDGMENT

SIKRI C.J.

1. Seven writ petitions were filed in the Mysore High Court under Article 226 of the Constitution challenging they validity of the Mysore Land Revenue (Surcharge) Act, 1961 (Mysore Act XII of 1961), as amended by Mysore Acts 1 and 31 of 1963, as being ultra vires the Constitution. Some of the petitioners were from South Kanara District, and some from Bellary District, which were part of the Madras State prior to the re-organisation of States. Some petitioners were from the Karnataka area of the then Bombay State. The High Court held that the Acts were within the competence of the Mysore Legislature and did not violate Articles 14, 19 or 31 of the Constitution.

2. There are six appeals before us but the learned counsel for the appellant gave us facts relating to writ petition arising from South Kanara District only. It is common ground that if the High Court judgment on the writ petition arising from South Kanara District is upheld, the other appeals must also fail.

3. In writ petition No. 1137 of 1963, which is concerned with lands in South Kanara District, the facts in brief are these. The petitioner mutt, which is appellant before us, owned immovable properties in the district of South Kanara and was paying an assessment to the Government approximately of about Rs. 8,000/- per annum. In respect of these lands survey and settlements were introduced from 1902 to 1904 and classified into three major classes of lands, viz., dry, wet and garden. The settlement was for a period of thirty years and the wet lands were further classified into sub-classes.

4. Under the terms of the Ryotwari settlement governing the district the revenue assessment rates for the different classes of lands were fixed for a period of thirty years and they could not be varied during that period. In 1934, after the said period of 30 years, by notification, dated April 20, 1934 the rates of assessment of garden and wet lands were revised and increased uniformly by 12.1/2 per cent. on the existing rates. Under the settlement of 1934 it was an express term and condition that there was to be no increment of assessment during the period of thirty years of the settlement of any assessment.

5. The Madras Legislature levied a surcharge on these lands in 1954, and again in 1955, but by the time anything could be done under the Madras Land Revenue (Surcharge) Act, 1954 and the Madras Land Revenue (Additional Surcharge) Act, 1955, the district of South Kanara with the exception of Kasaragod Taluk became integrated with Mysore and other areas and formed the new State.

6. By virtue of Section 119 of the States Re-organisation Act the lands continued to pay land revenue under the existing law, but the new State enacted Mysore Act No. XIII of 1961, called the Mysore Land Revenue (Surcharge) Act, 1961, which came into force in April 1, 1961. Under this Act a surcharge on the land revenue at the rate of 15 np. on every rupee of land revenue was levied and this was payable by every landholder liable to pay a sum exceeding Rs. 20 as land revenue. Section 3(2) provided for an exemption to merged territories or merged areas within the Bombay Area, or within the Hyderabad area, if on such land the land revenue payable had not been fixed by a revenue survey and settlement made under the Bombay Land Revenue Code, 1879, or the Hyderabad Land Revenue Act, 1318 Fasli, and the land revenue payable after remission, if any, was equal to or more than the land revenue and the surcharge under sub-section (1) payable on similar lands in the nearest neighbouring village to which the revenue survey and settlement had been introduced.

7. Another Act, called the Mysore Land Revenue (Surcharge) (Amendment) Act, 1962 was enacted and it came into force from April 1, 1962. Under this Act the surcharge for the two years, viz., 1962-63 and 1963-64 was raised to 100 per cent. of the land revenue in the case of the wet and garden lands and 75 per cent. of the land revenue in respect of such dry lands. Section 5 of the Surcharge Act of 1961 provided for the surcharge being treated as land revenue and being recovered as such.

8. Before the High Court the Acts were challenged on four grounds :

> (1) The Mysore Legislature had no legislative competence to enact the Mysore Act No. 13 of 1961 or the amending the Act;
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> (2) Under any circumstances the Legislature had no competence to levy additional land revenue if the levy in question was considered as land revenue during the period the settlement was in force;
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> (3) The impugned Act was ultra vires Article 19(1)(f) and Article 31 of the Constitution; and
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> (4) The levy in question was hit by Article by Article 14 of the Constitution as the same was discriminatory in character. Before us the learned counsel for the appellant has confined his attack on the first and the fourth grounds.

9. The High Court held that the so-called land revenue surcharge was but an additional imposition of land revenue or a land tax and fell either within Entry 45 or Entry 49 of the State List.

10. It seems to us that the surcharge fell squarely within Entry 45. The legislation is but an enhancement of the land revenue by imposition of surcharge and it cannot be called a tax on land revenue, as contended by the learned counsel for the appellant. It is common practice among the Indian Legislatures to impose surcharge on existing tax. Even Article 271 of the Indian Constitution speaks of a surcharge for the purpose of the Union being levied by way of increase in the duties or taxes mentioned in Article 269 and Article 270.

11. Section 3(1) of the Act of 1961 reads :

> "3(1) Notwithstanding anything contained in any contract, grant or other instrument, or in the Mysore Land Revenue Code, 1888 (Mysore Act IV of 1888) or any other

corresponding law or orders having the force of law in any area of the State -

(a) Every landholder liable to pay a sum exceeding twenty rupees for a revenue year to the Government in respect of all lands held by him shall pay for every revenue year surcharge at the rate of fifteen naye paise on every rupee of the land revenue payable by him; and

(b) Where the term for which the assessment of land revenue on any land fixed under the Mysore Land Revenue Code, 1888 (Mysore Act IV of 1888) or under any corresponding law or order in force in any area of the State has expired, every such landholder shall pay for every revenue year an additional surcharge at the rate of twenty naye paise on every rupee of the land revenue on such land until the land revenue fixed at the next revenue survey and settlement on such land becomes payable."

12. It seems to us that the Act clearly levies land revenue although it is by way of surcharge on the existing land revenue. If this is so, the fact that the surcharge was raised to 100 per cent. of the land revenue on the wet and garden lands and 75 per cent. of the land revenue in respect of dry lands, subject to some minor exceptions, does not change the nature of the imposition.

13. We may mention that the Madras High Court took the same view in C. V. Rajagopalachariar v. State of Madras. (AIR 1960 Mad 543).

14. We agree with the High Court that the Mysore Legislature was competent to enact the impugned Acts.

15. The learned counsel challenged the validity of the Acts under Article 14 of the Constitution on the ground that it was common ground that there was inequality in taxation between the lands comprised in the South Kanara District and the areas in the erstwhile Mysore State. The High Court proceeded on the basis that the land revenue was highest in the Madras area of the State as it was represented to it that in the old Madras State half of the estimated net produce was taken as land revenue where as in other areas only 1/16th of the gross produce was taken as land revenue. These facts were not admitted by the State but the High Court assumed those facts for the purpose of the case to be correct. We will also proceed on those assumptions because even assuming these facts it cannot be said that there has been any breach of Article 14 of the Constitution.

16. This Court, in State of Andhra Pradesh v. Nalla Raja Reddy, ((1967) 3 SCR 28 : AIR 1967 SC 1458) while dealing with the Andhra Pradesh Land Revenue (Additional Assessment) and Cess Revision Act 22 of 1962, made the following general observations :

"A statutory provision may offend Article 14 of the Constitution both by finding differences where there are none and by making no difference where there is one. Decided cases laid down two tests to ascertain whether a classification is permissible or not, viz. :

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and

(ii) that the differentia must have a rational relation to the object sought to be

achieved by the statute in question."

17. After referring to the decision of the Madras High Court in the Rajagopalachariar's case (supra), this Court observed :

> "In the said Madras Acts a surcharge was imposed in addition to the pervious rates and the previous rates had been made on the basis of the Ryotwari settlements which did not offend Article 14 of the Constitution and, therefore, a small addition to the said rates could not likewise infringe the said article."

18. Referring to the judgment under appeal in the present case, this Court observed in Nalla Reddy's case (supra), as follows :

> "Nor has the decision of the Mysore High Court in H. H. Vishwesha Thirtha Swamiar or Sri Pejawar Mutt v. The State of Mysore, ((1966) 1 Mys LJ 351) in regard to the Mysore Land Revenue Surcharge Act 13 of 1961, any bearing on the present question. There, as in the Madras Acts, the revenue surcharge levied was an additional imposition of land tax and, therefore there Mysore High Court held that it did not offend Article 14 of the Constitution. In holding that Article 14 was not infringed, the Court said :
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> 'We have before us a temporary measure. That is an extremely important circumstance. The State, not unreasonably, proceeded on the basis that a temporary levy could be made on the basis of existing rates. We can think of no other reasonable basis on which the levy could have been made. It may be that in the result some areas were taxed more than others. But yet it cannot be said with any jurisdiction that there was any hostile discrimination between one area and another.'
>
> It will be seen that in that case on existing rates based upon scientific data a surcharge was imposed as a temporary measure till a uniform land revenue law was enacted for the whole State."

19. It seems to us that this Court rightly distinguished the two above mentioned cases on good grounds. We have here a temporary measure imposing additiobnal land revenue while resettlement and survey was being done in the entire State. This process necessarily takes a long time. It is stated in the judgment of the High Court that the settlement report was received by the Government only in 1963. In these circumstances it cannot be said that the State acted arbitrarily in imposing a surcharge on land revenue which was being levied under the existing settlements and Acts.

20. Reorganisation of the States is an important in factor in considering Article 14 and existing laws or any temporary laws that may be made because of reorganisation. This Court, in State of Madhya Pradesh v. Bhopal Sugar Industries Ltd., ((1964) 6 SCR 846 : AIR 1964 SC 1179) observed :

> "Continuance of the laws of the old region after the reorganisation of Section 119 of the States Reorganisation Act was by it self not discriminatory even though it resulted in differential treatment of persons, objects and transactions an the new State, because it was intended to serve a dual purpose - facilitating the early formation of homogeneous units in the larger interest of the Union, and maintaining even while merging its political identity in the new unit, the distinctive character of each region, till uniformity of laws was secured in those branches in which it was

> expedient after full enquiry to do so."

In reply to the argument that the State had sufficient time and opportunity to decide whether the continence of the impugned Act in the Bhopal region would be consistent with Article 14 of the Constitution, this Court observed :

> "It would be impossible to lay down any definite time limit within which the State had to make necessary adjustments so as to effectuate the equality clause of the Constitution."

21. The learned counsel contended before us that the State could have easily waited for a few years before levying the additional surcharge while the enquiries were pending. This is a matter not for the Courts but for the State Legislature to determine. If the State needs funds urgently it is for it to levy additional revenue provided it does not infringe Article 14. In view of the facts of this case, the temporary nature of the Acts, and the pendency of the re-settlement and survey proceeding we cannot say that the legislature has acted contrary to the provisions of Article 14.

22. In the result the appeals fail and are dismissed but there will be no order as to costs in these appeals.

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