

Sarajini Tea Co. (P) Ltd.

Vs

Collector of Dibrugarh, Assam and another

Civil Appeal No. 6650 of 1983

(M. N. Venkatachaliah, S. C. Agrawal JJ)

24.01.1992

### JUDGEMENT

S. C. AGRAWAL, J.:-

1. This appeal by special leave is directed against the judgment and order dated June 1, 1983 of the Gauhati High Court in Civil Rule No. 876 of 1981. It raises for consideration the question whether the expression 'annual land revenue in S. 12 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (hereinafter referred to as 'the Ceiling Act) would include 'surcharge' payable under the Assam Land Revenue and Land (Surcharge) Act, 1970 (hereinafter referred to as 'the Surcharge Act ) and the 'local rate' payable under the Assam Local Rates Regulation, 1879 (hereinafter referred to as the Local Rates Regulation).

2. The Ceiling Act was enacted by the Assam State Legislature to make provision for imposition of limits on the areas of land that may be held by a person. S. 4 of the Act prescribes the ceiling on the existing land. Under S. 5 a person holding land in excess of the ceiling is required to submit a return and under S. 7(1), the Collector prepares a draft statement which shows the lands in excess of the limits fixed under S. 4. The said draft statement is published under sub-sec. (2) of S.7 for the purpose of submitting objections. After considering the said objections, the draft statement is made final under sub-sec. (4) of S. 7; and with effect from the date on which the final statement is signed by the Collector, all rights, title and interest of the person or persons whose lands are shown in excess in such statement, stand transferred to and vested in the State Government, free from all encumbrances created by such person. S. 12 makes provision for payment of compensation for the land which stands transferred to and vested in the State Government. Under Cl. (a) of S. 12 where the person from whom excess land has been acquired, held it as the owner thereof, the compensation, that is payable is, in the case of fallow land, an amount equal to 25 times the full rate of the annual land revenue for such land and, in case of any other land, an amount equal to 50 times such annual land revenue.

3. The Ceiling Act, as originally enacted, did not apply to tea estates. It was amended by Assam Act VIII of 1971 which came into force on March 27, 1971 whereby sub-sec. (2) of S. 4 was amended and the Ceiling Act was made applicable to tea plantations and land in excess of such land as has been used for special cultivation of tea and the purposes ancillary thereto was brought within the ceiling.

4. The appellant is a tea company. Land measuring 1650 bighas, 4 katthas and 5 lathhas belonging to it was declared as excess land under the Ceiling Act on September 9, 1975 by the Collector, Dibrugarh, respondent No. 1 herein, and he also took over possession of the same. A sum of Rs.

71,811 was assessed as the compensation payable to the appellant for the said land under S. 12 of the Ceiling Act. The said figure was arrived at by excluding the surcharge and the local rate payable in respect of the land. The appellant filed an appeal against the said order before the District Judge, Dibrugarh, who, by his order dated July 1, 1981, enhanced the amount of compensation by including the surcharge as well as the local rate as part of the annual land revenue. Respondent No. 1 challenged the said order of the District Judge by moving a writ petition under Arts. 226 and 227 of the Constitution before the High Court, which was allowed by the High Court by its judgment dated June 1, 1983 on the view that the expression 'full rate of annual land revenue' meant only the revenue assessed on the land as such and the Legislature by enacting S. 12 of the Ceiling Act did not have in their mind the local rates which were already leviable under the Local Rates Regulation, at the time of enacting S. 12 of the Act and the surcharge on the land revenue which was subsequently levied under the Surcharge Act. The said decision of the High Court was based on its earlier judgment dated December 21, 1982 in Civil Rule No. 194 of 1982: (reported in 1983 (2) Gauhati LR 123) wherein the High Court had fully considered this question and had arrived at the aforesaid conclusion. Feeling aggrieved by the aforesaid judgment of the High Court, the appellant has filed this appeal.

5. Before we proceed to deal with the submissions of the learned counsel for the appellant we may deal with the preliminary objection that has been raised by Mr, Mazumdar, the learned counsel for he respondents. Mr. Mazumdar has urged that the appeal filed by the appellant before the District Judge, Dibrugarh, against the order for assessment of compensation under S. 12 of the Ceiling Act, was barred by limitation and that the District Judge was in error in condoning the delay in filing the said appeal. In this regard, Mr. Mazumdar has submitted that under the law a period of 30 days is prescribed for filing an appeal against an order under S. 12 and that in the instant case the final order granting compensation was passed by the State Government on February 8, 1979 and the appeal was filed on September 19, 1979, long after the stipulated period of limitation. On behalf of the appellant, it was submitted before the District Judge that no order was communicated to the appellant and that the Collector by his order dated February 17, 1979 directed the appellant to collect the amount of Rs. 71,811 and on request the company got a copy of the sanctioning letter on September 6, 1979 only and thus the appellant became aware of the sanction order only on September 6, 1979 and it preferred an appeal on September 19, 1979 which was within limitation. The District Judge has observed that the Government sanction of compensation was communicated by the Collector vide his letter dated February 17, 1979 which was duly acknowledged by the appellant vide its letter dated March 16, 1979 and that the appellant could have preferred the appeal by that time and that the appeal was filed beyond the period of limitation. But taking into consideration the peculiar circumstances of the proceeding and upon consideration of the principles of natural justice and fair play, the District Judge condoned the delay in the filing of the appeal. Since there is nothing in the Ceiling Act which excludes the applicability of Sections 4 to 24 of the Limitation Act, 1963, to proceeding under the Ceiling Act, the said provisions are applicable to such proceedings in view of sub-sec. (2) of S. 29 of the Limitation Act, 1963 and the District Judge was competent to condone the delay in the filing of the appeal. On a consideration of the facts and circumstances of the case, the District Judge considered it proper in the interest of justice to condone the delay. In the exercise of our jurisdiction under Article 136 of the Constitution, we do not consider it appropriate to interfere with the said exercise of discretion by the District Judge. The preliminary objection raised by the learned counsel for the respondents is, therefore, rejected.

6. The main question that arises for consideration in this appeal relates to assessment of compensation under S. 12 of the Ceiling Act. The relevant provisions of the said section are as under .-

"12. Where any land is transferred to and vested in the State Government under sub-sec. (4) of S. 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;

x        x        x        x        x

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 Re-assessment 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. From a perusal of the aforesaid provisions, it would appear that the measure for assessment of compensation is the full rate of annual land revenue' payable for the land acquired. The expression 'land revenue' is not defined in the Ceiling Act. Assessment and payment of land revenue in Assam is governed by the Assam Land and Revenue Reegulations, 1886 (hereinafter referred to as 'the Revenue Regulation). Clause (3) of S. 3 of the Revenue Regulation defines the expression 'land revenue' in the following terms :-

"3(e) "land revenue" means any revenue assesseed by the State Government on an estate, and includes any tax assessed in lieu of land revenue;"

8. By the Assam Land Revenue Reassessment Act, 1936, enacted for the purpose of regulating reassessment of land revenue in Assam, the land revenue was re-assessed. Thereafter, the Assam State Legislature enacted the Surcharge Act in 1970 to provide for the levy of surcharge on land revenue and rent assessed in the State of Assam. In sub-sec. (1) of S. 2 of the said Act the expression 'land revenue' is defined in the same terms as in S. 3(e) of the Revenue Regulation. In S. 3 the following provision is made for the levy of surcharge :-

"3. Levy of Surcharge.- 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 per cent of the land revenue or rent of all classes of holdings in addition to the land revenue or the rent payable by him."

9. Section 4 provides for provisional assessment of surcharge and issue of notice to the person or persons concerned. S. 5 provides for filing of objections and making of assessment after giving an opportunity of hearing. S. 7 makes the following provision for recovery of surcharge :-

"7. Surcharge recoverable as arrear of land revenue. The surcharge assessed under this 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."

10. Since the question for consideration is whether the surcharge levied under the Surcharge Act can be held to be land revenue, it is necessary to examine the nature of the said levy. According to the Shorter Oxford English Dictionary the word 'surcharge' stands for an additional or extra charge or payment. In *Bisra Stone Lime Co. Ltd. v. Orissa State Electricity Board*, (1976) 2 SCR 307: (AIR 1976 SC 127) after referring to the said definition, this Court had observed :

"Surcharge is thus a superadded charge, a charge over and above the usual or current dues." (Pp. 310-11) (of SCR) : (at p. 130, Para 11 of AIR).

11. In that case the Orissa State Electricity Board had imposed a uniform surcharge of 10% on the power tariff. It was argued that surcharge was unknown to the provisions of the Electricity (Supply) Act, 1948 and the Electricity Board had no power under the said Act to levy a surcharge. This Court negatived the said contention and in that context, after explaining the meaning of the expression 'surcharge', it was observed

"Although, therefore, in the present case it is in the form of a surcharge, it is in substance an addition to the stipulated rates of tariff. The nomenclature, therefore, does not alter the position. Enhancement of the rates by way of surcharge is well within the power of the Board to fix or revise the rates of tariff under the provisions of the Act." (p. 311) (of SCR). (at p. 130, Para 11 of AIR).

12. Similarly, in *Commr. of Income-tax, Kerala v. K. Srinivasan*, (1972) 2 SCR 309: (AIR 1972 SC 491) a question arose whether the term 'income-tax' as employed in S. 2 of the Finance Act, 1964, would include surcharge and additional surcharge whenever provided. This Court, while tracing the concept of surcharge in taxation laws of our country, has observed :

"The power to increase federal tax by surcharge by the federal legislature was recommended for the first time in the report of the committee on Indian Constitutional Reforms, Vol. I, Part I. From para 141 of the proposals it appears that the word "surcharge" was used compendiously for the special addition to taxes on income imposed in September, 1931. The Government of India Act, 1935, Part VII, contained provisions relating to finance, property contracts and suits. Ss. 137 and 138 in Chapter I headed "finance" provided for levy and collection of certain succession duties, stamp duties, terminal tax, taxes on fares and freights, and taxes on income respectively. In the proviso to Section 137 the federal legislature was empowered to increase at any time any of the duties of taxes leviable under that section by a surcharge for federal purposes and the whole proceeds of any such surcharge were to form part of the revenue of the federation. Sub-sec. (3) of S. 138 which dealt with taxes on income related to imposition of a surcharge." (p. 312) (of SCR) : (at p. 493 of AIR).

It was further observed at page 315 (of SCR): (at pp. 494-95 of AIR) of the report :

"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 tax". Thus the meaning of surcharge is to charge in addition or to subject to an additional or extra charge."

13. In *C.V. Rajagopalachariar v. State of Madras*, AIR 1960 Mad 543, in the context of the Madras Land Revenue Surcharge Act, 1954 and the Madras Land Revenue (Additional Surcharge) Act, 1955, it has been laid down (at p. 545):--

"The word "surcharge" implies an excess or additional burden or amount of money charged. Therefore, a surcharge of land revenue would also partake the character of land revenue and should be deemed to be an additional land revenue. Although S. 4 of the two enactments referred to above only deems it to be recoverable as a land revenue it is manifest that the surcharge would be a part of the land revenue. The effect of the two Acts would be, therefore, to increase the land revenue payable by a land holder to the extent of the surcharge levied. If, therefore, a surcharge levy has been made, the Government would be enabled to collect a higher amount by way of land revenue from a ryotwari pattadar than what was warranted by the terms of the previous ryotwari settlement."

14. The said decision was approved by this Court in *Vishwesh Thirthaswamiar v. State of Mysore* (1972) 1 SCR 137: (AIR 1971 SC 2377). In that case this Court was considering the question whether the Mysore State Legislature was competent to enact the Mysore Land Revenue (Surcharge) Act, 1961. After examining the nature of the levy the Mysore High Court had 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. This Court agreeing with the view of the High Court held that the surcharge fell squarely within Entry 45 of the State List, namely, land revenue. It was observed :-

"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 a common practice among the Indian Legislatures to impose surcharge on existing tax. Even Art. 271 of the Constitution speaks of a surcharge for the purpose of the Union being levied by way of increase in the duties or taxes mentioned in Art. 269 and Art. 270. (p. 140) (of SCR) : (at p. 2379 of AIR) :

"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% of the land revenue on the wet and garden land and 75% of the land revenue in respect of dry lands, subject to some minor exceptions does not change the nature of the imposition." (p. 141) (of SCR) (at pp. 2379-80 of AIR).

15. From the aforesaid decisions, it is amply clear that the expression 'surcharge' in the context of taxation means an additional imposition which results in enhancement of the tax and the nature of the additional imposition is the same as the tax on which it is imposed as surcharge. A surcharge on land revenue is an enhancement of the land revenue to the extent of the imposition of surcharge. The nature of such imposition is the same viz., land revenue on which it is a charge.

16. The learned Judges of the High Court have taken note of the decisions of this Court referred to above and were of the view that if they were to interpret only the expression 'land revenue', there

could not be any difficulty. They have observed that in the instant case they were interpreting the expression "full rate of annual land revenue payable for the land" in S. 12(a)(1) of the Ceiling Act. According to the learned Judges, the expression "full rate of land revenue" has to be understood in conformity with the Assam Land Revenue Regulation where different classes of estates are often referred to in terms of revenue, for example, khiraj or full revenue paying estates and Nisf-khiraj or half revenue paying estates. The learned Judges have referred to the provisions of the Assam Land Revenue Reassessment Act, 1936 which prescribes the procedure for reassessment and how the rates of revenue are to be fixed, as well as the Assam Assessment of Revenue Free Waste Land Grant Act, 1948 and have observed that the rate of revenue has been understood in the sense of revenue assessed on land. The learned Judges have also taken note of the provisions of the Surcharge Act and have pointed out that the Surcharge Act makes provision for assessment of surcharge in the prescribed procedure whereas in the case of land revenue, it is assessed in one settlement and continues till the succeeding settlement and under S. 3 of the Surcharge Act a person holding land measuring less than 10 Bighas, though liable to pay land revenue, is not liable to pay surcharge on his land revenue. The learned Judges have also laid emphasis on the expression 'in addition to the land revenue' used in S. 3 of the Surcharge Act and the expression 'along with land revenue' in S. 7 of the Surcharge Act. Taking into account the features referred to above, the learned Judges of the High Court have held that the Legislature clearly distinguished land revenue and surcharge. The learned Judges also referred to the decision of a Full Bench of five Judges of the High Court in Benoy Mazumdar v. Deputy Commissioner, Cochin (Civil Rule No. 28 of 1977 decided on September 28, 1981) wherein the Court was dealing with the constitutional validity of S. 7(1 A) of the Assam Land (Requisition and Acquisition) Act, 1948, and had to deal with the question of compensation in terms of multiple of annual land revenue. After mentioning the various decisions that were referred to in the said decision, the learned Judges have observed that in those cases the annual land revenue was taken to mean the land revenue as assessed on land and no where the idea of surcharge entered into that concept.

17. With great respect to the learned Judges of the High Court, we are unable to subscribe to this view. We do not find any sound basis for holding that surcharge on land revenue levied under the Surcharge Act is different and distinct in character from land revenue and does not fall within the ambit of annual land revenue under S. 12 of the Ceiling Act. The use of the words "full rate of" before the words "annual land revenue payable for the land" in S. 12(a)(1)(i) of the Ceiling Act do not, in our opinion, have a bearing upon the nature of the levy, which is land revenue. The said words have reference to the quantum of the levy which would form the basis for assessment of compensation. We find it difficult to appreciate how these words render inapplicable the principles laid down by this Court in Vishweshwar Thirthaswamiar's case (AIR 1971 SC 2377) (supra), that imposition of surcharge on land revenue is only an enhancement of the land revenue and nature of the said imposition is land revenue.

18. We do not consider that the words "in addition to the land revenue" in S. 3 and the words "along with land revenue" in S. 7 of the Surcharge Act imply that surcharge levied under the said Act is a levy which is distinct in nature from land revenue. These expressions only mean that surcharge @ 30% of the land revenue leviable under S. 3 of the Surcharge Act is over and above the amount that is payable as land revenue and in that sense it is additional charge or imposition which is payable by way of surcharge on land revenue. The fact that the said sum is to be paid and can be recovered along with the land revenue also does not alter the nature of the levy if it is otherwise found to be of the same character as land revenue. As regards the provisions for assessment of surcharge contained in the Surcharge Act, for assessment, we find that while land revenue is assessed in one settlement and continues till the succeeding settlement, surcharge having been imposed during the currency of

the settlement is required to be assessed. The need for assessment arises on account of the fact that surcharge is not leviable on a person holding land measuring less than 10 Bighas and, therefore, before making a demand for surcharge it is necessary to determine whether a person from whom demand is made is liable under the provisions of the Surcharge Act and is not entitled to claim exemption from such levy. The fact that the persons holding land less than 10 Bighas though liable to pay land revenue are not liable to pay surcharge under the Surcharge Act, does not, in our view, alter the character and nature of the levy. Benoy Mazumdar's case (supra) and the cases referred to therein, have no bearing because in those cases the question whether surcharge is to be included in land revenue was not in issue and has not been considered.

19. For the reasons aforesaid, we are unable to endorse the view of the High Court that surcharge on land revenue payable under the Surcharge Act is not land revenue but a levy which is distinct from land revenue. In consonance with the law laid down by this Court in Vishweshwari Thirthaswamiar's case (AIR 1971 SC 2377) (supra), it must be held that the surcharge on land revenue levied under the Surcharge Act, being an enhancement of the land revenue, is part of the land revenue and has to be treated as such for the purpose of assessing compensation under S.12 of the Ceiling Act.

20. We may now examine whether the local rate payable under the Local Rates Regulation can be regarded as land revenue. In the Preamble to the Local Rates Regulation, the said Regulation has been made to provide "for the 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 for local purposes." In S. 1 of the Regulation it is prescribed that the said Regulation shall come into force in such districts, in such parts thereof and on such dates, as the State Government may by notification in the Official Gazette, from time to time, direct. S. 3 of the Regulation prescribes the rates assessable and reads as under :-

"3. Rates Assessable. All land shall be liable to a levy at the rate of twenty-five paise for every rupee of the annual value of the land in addition to the land-revenue and local cesses (if any) assessed thereon."

21. Section 4 which deals with the effect of imposition of land rates on cess now leviable provides as follows :-

"4. Effect of imposition of land rate on cess now leviable. When a rate is imposed on any land under this Regulation, any cess now leviable on such land for any of the purposes mentioned in S. 12 shall cease to be levied on such land; or if such cess be maintained, a corresponding diminution shall be made in such rate."

22. Section 5 contains the following provision with regard to recovery of rates :

"5. Recovery of rate. All sums due on account of a rate imposed on any land under this 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."

23. In *Guruswamy & Co. v. State of Mysore* (1967) 1 SCR 548 : (AIR 1967 SC 1512), Hidayatullah, J., as the learned Chief Justice then was, has observed as under (at p. 1525, para 39 of AIR) :

"The word 'cess' is used in Ireland and is still in use in India although the word rate has replaced it in England. It means a tax and is generally used when the levy is for some special administrative expense which the name (health cess, education cess, road cess etc.) indicates. When levied as an increment to an existing tax, the name matters not for the validity of the cess must be judged of in the same way as the validity of the tax to which it is an increment."

24. In *Indian Cement Ltd. v. State of Tamil Nadu* (1990) 1 SCC 12: (AIR 1990 SC 85) these observations have been quoted and it has been mentioned that though they were made in the dissenting judgment, there was no dissent on this aspect of the matter.

25. From the aforesaid observations, it would appear that the expression 'rate' is generally used in the same sense as the expression 'cess'. S.4 of the Local Rates Regulation also indicates that the local rate which is imposed by the Local Rates Regulation is in the nature of cess because in S. 4 it has been provided that when a rate is imposed on any land under this Regulations any cess now leviable on such land for any of the purposes mentioned in S. 12, shall cease to be levied on such land or if such cess be maintained, a corresponding diminution shall be made for such rate. Moreover, as indicated in the Preamble, the amount realised by way of local rate is to be used for incurring expenditure for the relief and prevention of famine and for local purposes. Land revenue, on the other hand, forms part of general revenue of the State and is not limited for a Particular purpose. Local rate leviable under the Local Rates Regulation is, therefore, a levy which is distinct and different in nature from land revenue. S. 3 only provides a convenient mode of prescribing the rate for levy of local rate by fixing it as a proportion, namely, 25% of the annual value of the land and S. 5 only provides the mode of recovery of the rate as arrear of land revenue. The said provisions do not have the effect of equating the local rate with land revenue or making it a tax in lieu of land revenue.

26. The High Court has rightly held that local rate payable under the Local Rates Regulation is an imposition which is distinct in character from land revenue and cannot be regarded as land revenue or tax in lieu of land revenue. It cannot, therefore, be taken into consideration for assessing compensation under S. 12 of the Ceiling Act.

27. The appeal is, therefore, partly allowed and the judgment of the High Court to the extent it holds that 'surcharge' is a levy different and distinct from land revenue is set aside and it is held that surcharge payable under the Assam Land Revenue and Land (Surcharge) Act, 1970 constitutes land revenue and has to be taken into account for assessing compensation under S. 12 of the Assam Fixation of Ceiling on Land Holdings Act, 1956. The view of the High Court that the local rate payable under the Local Rates Regulation, 1879, is to be excluded for the purpose of assessing such compensation is upheld. The order of the High Court setting aside the judgment and order of the District Judge, dated July 1, 1981 in Misc. Appeal No. 5 of 1979 is maintained. The matter will go back to the District Judge, Dibrugarh, for redetermination of the compensation payable to the appellant in Misc. Appeal No. 5 of 1979 in accordance with law. The parties are left to bear their own costs. Appeal partly allowed.

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