BOMBAY HIGH COURT

Chandulal Vadilal

Vs.

Government of The Province of Bombay

First Appeal No. 177 of 1939

(John Beaumont, Kt., C.J. and Wassoodew, J.)

05.08.1942

JUDGMENT

John Beaumont, Kt., C.J.

1. In this suit the plaintiffs' case is that in 1933 the Collector fixed assessment on the plaintiffs' land at the standard rate of ₹ 200 per acre commencing from the year 1925-26, and in December, 1933, he issued notices to the plaintiffs demanding payment in accordance with the assessment. The plaintiffs alleged that the assessment was illegal, and consequently the notices to pay were also illegal, and they proposed to file a suit against the Secretary of State for a declaration to that effect; On January 22, 1934, they gave a notice, which was intended to comply with Section 80 of the Civil Procedure Code, and which set out in detail the plaintiffs' case. In paragraph 22 it alleged that the order of the Collector fixing the assessment deserves to be declared a nullity, and the plaintiffs therefore bring the suit for this declaration and also for the refund of any amount that the Collector will levy from the plaintiffs. Then in paragraph 23 it is stated as follows :

> At present the amount is not ascertained, but the Collector had called upon the 1st plaintiff, by the talati of Sheher Kotda, to pay ₹ 6,936/- as assessment and ₹ 433-8-0/- local fund; making total of ₹ 7,369-8-0/- and it will be this amount or any other larger amount which will be sought to be recovered by the plaintiffs from the Government as assessment illegally levied from them.
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> In the suit which was subsequently filed on July 16, 1984, that amount of ₹ 7,369-8-0/- was claimed as a refund, because the money had been paid in January and February, 1934. The learned Subordinate Judge held the notice to be bad, as not complying with the statute, and in consequence dismissed the plaintiffs' suit. The ground on which he held the notice to be bad was that in so far as a refund was claimed,-and that was the principal

claim made in the plaint,-it was a Cause of action which had not arisen at the date of the notice.

2. Now, Section 80 of the Civil Procedure Code provides, so far as material, that no suit shall be instituted against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been served, as therein provided, stating the cause of action, the name, description and place of residence of the plaintiff, and the relief which he claims. So that, the cause of action and the relief claimed must be stated in the notice. I agree with the learned trial Judge in thinking that to state a future cause of action would not be a Compliance with the section, but as at present advised I am not prepared to say that where a Cause of action exists of which notice is given, the notice is rendered bad, because it refers to a possible further claim which may arise before a suit can be brought. One must construe the section with some regard to common sense, and to the object with which it appears to have been passed. That object, as has been pointed out in a good many cases, is to give to the public officer concerned notice of the claim which is going to be made against him, and to give him reasonable time in which to consider his reactions. In construing the section, one must remember that the suit cannot be brought for two months after the date of the notice. The cause of action, which is to be stated in the notice, is the bundle of facts which go to make up the right in respect of which the plaintiff proposes to sue, and it is obvious that before the suit can be brought, it may be that that bundle of facts will be added to or subtracted from, and I do not myself think that the notice is invalidated, because it refers to a possible additional claim, consequential upon the cause of action specified therein, and states that if such additional claim arises, the plaintiff will sue also in respect of it. If that is not the right construction of the section, it means that in respect of any consequential relief which may arise after the date of the notice, the plaintiff cannot sue in the contemplated suit; he must issue a fresh notice, and file a fresh suit. Certainly the object of Section 80 was not to multiply suits or increase-costs.

3. But in this case it is not really necessary to go as far as that, because, in my opinion, the notice complied strictly with the requirements of Section 80. The suit in respect of which a notice is to be served is a suit against a public officer in respect of any act purporting to be done by such public officer in his official capacity. Now, the only acts purporting to be done by the Collector in his official capacity, of which the plaintiffs complain, are, first, the making of an illegal assessment, and, secondly, the demand made for payment in respect of that illegal assessment, and of both those acts notice was given, and according to the notice a declaration was to be asked for in respect of them. The payment which gave rise to the claim for refund was not an act of the Collector; it was an act voluntarily performed by the plaintiffs. No doubt, they paid under protest, and only because of the act of the Collector alleged to be illegal; but the actual payment, which founds the claim for refund, was not an act done by the Collector, and no notice in' respect of that was required to be given. In my opinion, the notice in this case sufficiently complied with Section 80, since it gave notice of the acts which the Collector was alleged to have done in his official capacity, of which the plaintiffs complained, and from: which the cause of action

resulted.

4. In my opinion, therefore, the learned Judge was wrong in dismissing the plaintiffs' suit on the ground that there was no notice complying with Section 80.

5. The learned Judge in spite of dismissing the plaintiffs' suit raised issues which would arise if the notice had been proper, and he discussed those issues, and recorded his findings upon them. Government have filed cross-objections challenging the findings of the learned Judge based on the supposition that a proper notice had been served, and, as all the material is before this Court, I think we can deal with the case on merits and dispose of the whole matter.

6. The position appears to be that prior to 1918 the plaintiffs' four Survey Nos. 32, 35, 36 and 58 had been assessed as non-agricultural kharaba, the occupant being Jivanlal Vrajlal vahivatdar of the Sarangpur Ginning Factory. That appears from exhibit 34, which is Village Form No. VII, and which shows that the assessment on two survey numbers was for the year 1916, and the assessment for the other two survey numbers was for 1918. Survey No. 36 was assessed at ₹ 98/-, Survey Nos. 32 and 35 were assessed at ₹ 16/-, and Survey No. 58 was assessed at Re. 0-4-0, making a total of ₹ 130-4-0/-. Why these uneven assessments were made does not appear from the record. But it does appear from the record, as I have said, that all these assessments were made on a non-agricultural basis, and it is clear that buildings had been erected on all these survey numbers. The plan annexed to the sanad of 1923, to which I will refer in a moment, shows that all these survey numbers had been built over to a substantial extent at that date. It is also clear from exhibit 34 that there was no separate assessment in respect of the part built over, and the part not built over, and, to my mind, the only presumption which we can draw from exhibit 34 is that this land was assessed as non-agricultural land used for building purposes, that is to say, that it fell within Section 48(b) of the Bombay Land Revenue Code. Section 48 divides land to be assessed into three classes : (a) land used for the purpose of agriculture, (b) land used for the purpose of building, and (c) land used for a purpose other than agriculture or building. That was the position in 1922, when the manager of the Ginning Factory made an application to the Collector of Ahmadabad on September 5, 1922, which is exhibit 37. The application states that the Ahmadabad Sarangpur Ginning and Manufacturing Co. Ltd. is the holder of these four survey numbers, that they have been converted to non-agricultural purpose, namely, erection of ginning factory and mills, and a fine was paid in 1891-92. Then it states that a Considerable number of buildings have been constructed, namely, a ginning factory, engine house, boiler house, chimney tanks, offices, godowns and rooms, and a weaving shed, which was subsequently dismantled. Then it states that the petitioner company applied to the Municipality of Ahmadabad for permission to build chawls, but the Municipality wanted the company to approach the Collector for fresh permission to convert the site, converted to mill purposes, to crawl purposes. The application was made accordingly, and in due course, on May 23, 1923, the Collector granted a sanad giving permission to use for building purposes the land in question at an

assessment of ₹ 123/-, which was less than the total assessment then payable in respect of the four survey numbers, and providing that the applicants should use the plot only for building purposes of the nature specified in condition (3). Under condition (3) the applicants were required within three years from the date thereof to erect and complete buildings as shown in the plan. The applicants never in fact complied with that condition. They did not erect any buildings within three years, and, therefore, the permission lapsed, as the learned Judge has held. But in 1932 they did erect a new building, and thereupon the Collector levied assessment at the standard rate of assessment under Section 65 of the Bombay Land Revenue Code, and Rule 82 of the rules issued under that Act. The question is whether that assessment is legal. Section 65 and Rule 82 provide for altered assessment being levied where the land is converted from agricultural to non-agricultural purposes, and, as I have already pointed out, this land had been used and assessed at all material times for non-agricultural purposes. If the user of the land came under Section 48 (c), then I think the Collector could have levied increased assessment under Rule 90. But there is no evidence before us on which we can hold that the land was ever assessed for non-agricultural and non-building purposes. There having been buildings on the land at all material, times, and each of the survey numbers having been assessed as a whole for non-agricultural purposes, we must assume that the land was assessed for building purposes, and there appears to be no section of the Land Revenue Code, and no rule, which entitles the Collector to levy enhanced assessment when, upon land already assessed for building purposes, the owner proceeds to erect new buildings, though those new buildings may be of greater value.

7. On the view we take, that this land at all material times was land assessed for non-agricultural and building purposes, we have been referred to no statutory provision which entitled the Collector to make the increased assessment which he did make. I agree with the learned trial Judge that the fact that the assessees asked for permission to build in 1922, because, as shown in the application, the Municipality requested them to do so, cannot alter the legal position existing prior to the application. As the permission granted was never acted upon, and has long since expired, we have to deal with the case, as the learned Judge held, on the basis of the rights of the assessees, apart altogether from the permission granted to them in 1923, and on that basis I agree with the learned Judge that the Collector had no power to make the enhanced assessment which he did make.

8. We therefore allow the appeal, and make a decree for the refund of the sum as prayed, with interest at six per cent per annum from the respective dates of payment.

9. Appeal allowed with costs throughout. Costs of the appeal to be recovered from respondent No. 1.

10. Cross-objections dismissed with costs in favour of the appellants and respondent No. 2.
Wassoodew, J.

11. I agree.

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