Vishwesha Thirtha Swamiari & Ors vs State Of Mysore And Anr on 12 August, 1971

Equivalent citations: 1971 AIR 2377, 1972 SCR (1) 137, AIR 1971 SUPREME COURT 2377

Author: S.M. Sikri

Bench: S.M. Sikri, A.N. Ray, D.G. Palekar

PETITIONER:
VISHWESHA THIRTHA SWAMIARI & ORS

Vs.

RESPONDENT:
STATE OF MYSORE AND ANR.

DATE OF JUDGMENT12/08/1971

BENCH:
SIKRI, S.M. (CJ)
BENCH:
SIKRI, S.M. (CJ)
RAY, A.N.
PALEKAR, D.G.

CITATION:
1971 AIR 2377 1972 SCR (1) 137
CITATOR INFO :
R 1992 SC1264 (14,17,19)

ACT:
Mysore Land Revenue (Surcharge) Act, 1961 as amended-Competence of State Legislature to levy-Surcharge on land revenue-Whether the Acts discriminatory and therefore violative of Art. 14 of the Constitution.

HEADNOTE:
In 1961, the new State of Mysore enacted Mysore Land Revenue (Surcharge) Act, 1961, by which a surcharge on the land Revenue @15 n.p. 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. By another enactment Mysore Land Revenue (Surcharge) Amendment Act, 1962, the surcharge for 1962-63 and 1963-64 was raised to 100 per cent

of the land revenue in the case of wet and garden lands and 75 % in respect of dry lands.

Both these Acts were challenged before the High Court on several grounds but the High Court rejected them and dismissed the petitions. In appeal, before this Court it was contended (i) that the Mysore Legislature was not competent to enact the Mysore Act of 1961 and the amending Act and (ii) that since there is inequality in taxation between lands comprised in South Kanara District and the areas in the erstwhile Mysore State, the levy is hit by Art. 14 as being discrimirfatory in character and therefore bad in law. Dismissing the appeal,

HELD: (i) Surcharge fell squarely under Entry 45 of List It and it is not a tax on land revenue but an enhancement of land revenue by way of surcharge and even if it is raised by 1 00 % does not change the nature of the imposition. It is still land revenue and the Mysore Legislature is competent to enact the impugned Acts. [140 D-E]

(ii) In view of the temporary nature of the Acts imposing additional land revenue, while resettlement and survey was being done in the entire State in order to have a uniform land revenue law, the Acts in question are not violative of Art. 14 of the Constitution. [144F]

C. V. Rajagopalachariar v. State of Madras, A.I.R. 1960 Mad. 543, State of Andhra Pradesh v. Nalla Raja Reddy [1967] 3 S. C. R. 28 and State of Madhya Pradesh v. Bhopal Sugar Industries Ltd.[1964] 6 S.C.R. 846, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2222 of 1966, 441 to 444 and 446 of 1970.

Appeal from the judgment and order dated September 17, 1965 of the Mysore High Court in Writ Petitions Nos. 1173, 1138, 1151, 1152, 1153 and 1155 of 1963.

V. S. Desai and R. B. Datar, for the appellants (i all the appeals).

R. Gopalakrishnan and M. Veerappa, for the respondents (in all the appeals).

The Judgment of the Court was delivered by Sikri, C. J.-Seven writ petitions were filed in the Mysore High Court under art. 226 of the Constitution challenging the validity of the Mysore Land Revenue (Surcharge) Act, 1961-Mysore Act XIII 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 reorganisation of States. Some petitioners were from the Karnatak 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 Arts. 14, 19 or 31 of the Constitution.

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.

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 settlement 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 30 years and the wet lands were further classified into sub-classes. 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 30 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 30 years of the settlement of any assessment.

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.

By virtue of s. 119 of the States Reorganisation 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 on 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-s.

> (1) payable on similar lands in the nearest neighbouring villages to which the revenue survey and settlement had been introduced.

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 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.

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 Act; (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; (3) The impugned Act was ultra-vires art. 19 (1) (f)and art. 31 of the Constitution; and (4) The levy in question was hit by art. 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. 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.

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 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. 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."

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 1 00 % of the 1-and 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.

We may mention that the Madras High Court took the same view in C. Y. Rajagopalachariar v.. State of Madras. (1) We agree with the High Court that the Mysore Legislature was competent to enact the

impugned Acts.

The learned counsel challenged the validity of the Acts. under art. 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 facts it cannot be said that there has been any breach of art. 14 of the Constitution.

(1) A.I.R. [1960] Mad.543.

This Court, in State of Andhra Pradesh v. Nalla Raja Reddy (1), while dealing with the Andhra Pradesh Land A Revenue (Additional Assessment) and Cess Revision Act 22 of 1962 made the following general ,observations "A statutory provision may offend Art. 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 differential must have a rational relation to the ,object sought to be achieved by the statute in question.

After referring to the decision of the Madras High Court in Rajagopalachariar's (2) case this Court observed :

"In the said Madras Acts a surcharge was im- posed in addition to the previous rates and the previous rates had been made on the basis of ryotwari settlements which did not offend Art. 14 of the Constitution and, therefore, a small addition to the said rates could not likewise infringe the said article."

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

"Nor has the decision of the Mysore High Court in H.H. Vishwasha Thirtha Swamiar or Sri Pajawar Nutt v. The State of Mysore in regard to the Mysore Land Revenue Surcharge Act (1 3 of 196 1) 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, the Mysore High Court held that it did not offend Art. 14 of the (1) [1967] 3 S.C.R. 28, 46-48.

(2) A.I.R. 1960 Med. 543.

Constitution. In holding that Art. 14 was not infringed, the Court said-

> "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 justification 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."

It seems to us that this Court rightly distinguished the two above mentioned cases on good grounds. We have here a temporary measure imposing additional 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. Reorganisation of the State is an important factor in considering art. 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. (1) observed:

> "Continuance of the laws of the old region after the reorganisation by S. 119 of the States Reorganisation Act was by itself not discrimi-

(1) [1964] 6, S.C.R. 846, 852-53.

natory even though it resulted in differential treatment of persons, objects and transactions in 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 continuance of the impugned act in the Bhopal region would be consistent with art. 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."

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. Ibis 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 art. 14. In view of the facts of this case, the temporary nature of the Acts, and the pendency of the resettlement and survey proceeding we cannot say that the Legislature has acted contrary to the provisions of art. 14. In the result the appeals fail and are dismissed but there will be no order as to costs in these appeals.

S. C. Appeals dismissed.