Supreme Court of India
State Of Bombay vs Mulji Jetha And Co. on 10 February, 1955
Equivalent citations: AIR 1955 SC 325
Author: Jagannadhadas
Bench: Bose, Jagannadhadas, V Ayyar, Sinha
JUDGMENT Jagannadhadas, J.

1. These two are appeals on leave granted by the High Court of Bombay under Article 133(1) (c) of the Constitution against its common judgment in Second Appeals Nos. 936 and 937 of 1947. The appellant in each of these appeals is the State of Bombay and the respondent is Mulji Jetha & Company.

The respondent owned three survey numbers at Jalgaon in the State of Bombay being Survey Nos. 253-A, 254-A, and 253-B, which, prior to the year 1911, were used and assessed as agricultural lands. In the year 1911, the respondent made * an application under Section 35, Bombay Land Revenue Code, 1879 (Bombay Act V of 1879) (hereinafter referred to as the Code), to the Collector of Jalgaon for permission to divert the lands comprised in Survey Nos. 253-A and 254-A from agricultural to non-agricultural use for the purpose of constructing thereon a structure in accordance with a plan submitted along with that application. In the year 1912, he made another similar application in respect of Survey No. 253-B.

The Collector after referring the plans to the Municipality and obtaining their views, granted the necessary permission, on 1-8-1911, in respect of Survey Nos. 253-A and 254-A, and on 1st August, 1912, in respect of Survey No. 253-B, for diversion of the lands in these three survey numbers to non-agricultural use in accordance with the plans so approved. The assessment of these survey numbers was thereupon revised by enhancing the pre-existing rate from Rs. 1-9-0 to Rs. 20 per acre, under Section 48 of the Code and Rule 56(2) framed by the Government in exercise of the powers under Section 214 of the Code.

Thereupon three 'sanads' (Exs. 38, 39 and 40) were issued on 24-7-1914, by the Collector in favour of the respondent under the said rules in respect of the three survey numbers specifying the enhanced assessment in respect of each of the survey numbers for a period of 50 years commencing from the date of the grant of the permission. Pursuant to the permission granted and in accordance with he plans approved, the respondent constructed buildings on the said survey numbers and had been paying the revised assessment.

Survey Nos. 253-A and 254-A were consolidated into one City Survey No. 2113 and Survey No. 253-B was changed into City Survey No. 2114. In the year 1941, the respondent wanted to build two more bungalows on City Survey No. 2113. He wanted also to dismantle the structures on City Survey No. 2114 and to sell the land comprised therein in convenient plots for building purposes in accordance with the Municipal Building bye-laws. He accordingly wrote two letters to the Collector dated 7-11-1941, one in respect of each of the two survey numbers, intimating his intention and added in each of the letters as follows :

"We presume that you have no objection to this."

The Collector thereupon intimated his reply to both the letters by one letter (Ex. P-34) dated 11-2-1942, as follows : "With reference to your two applications of 7-11-1941, on the subject noted above, I am to inform you that since the original order about the grant of permission laid down the condition that bungalows shall be built in accordance with the plan produced, Collector's permission is necessary to make any alteration or addition in the plan then already approved." In view of this reply the respondent filed against the Province of Bombay the two suits out of which the present appeals arise for a declaration of his right and for an injunction, after issuing the requisite notices under Section 80 of the Civil Procedure Code. Appeal No. 9 arises out of the suit relating to Survey No, 2114 and the declaration asked for therein is "That the plaintiff is at full liberty and has full right to demolish the buildings, bungalows, out-houses, garage, privies, etc., standing on the property in suit and to divide the land into plots and to sell them for buildings being constructed thereon in accordance with the Municipal Bye-laws, and that neither the defendant nor their officers are entitled to do any act prejudicial to the plaintiff's aforesaid rights." Appeal No. 10 arises out of the suit which relates to Survey No. 2113 and the declaration asked for therein is "That the plaintiff is entitled to construct buildings on the said land in suit and to make additions and alterations therein in accordance with the municipal bye-laws and that neither the defendant nor any of their officers have any authority in this matter."

The trial court decided against the plaintiffs contention and dismissed the suits and this dismissal was confirmed on appeals therefrom by the District Judge of East Khandesh at Jalgaon. On Second Appeals, however, the learned Judges of the Bombay High Court reversed the dismissal and granted the declarations asked for by the plaintiff in each of the two suits.

2. The case of the plaintiff-respondent is that the permission to divert the lands from their original agricultural user to building purposes having been granted in 1911-1912 and the assessment for the entire area comprised in these survey numbers having been enhanced on that basis, the Collector has not right to insist on his permission being obtained for any further alterations or additions to the buildings or for parcelling out the land as building sites and selling them. He also contended that since the lands are situated within the limits of Jalgaon Municipality, he was bound to comply only with the Municipal bye-laws relating to building constructions and that the Collector had no authority in this behalf.

The main defence on behalf of the State was set out in paragraph 4 of the written statement and is as follows :

"The plaintiff holds the suit land as occupant. Formerly the said land was used and assessed as agricultural land. In 1911 (1912) the Collector granted permission under Sections 65 and 67 to erect buildings thereon in accordance with the plan submitted by the plaintiff. It is denied that the said permission enables the plaintiff to erect buildings on any site whatsoever comprised within the suit land. The plaintiff could lawfully erect buildings only upon the sites that were specified in the said plan, and he could erect them only in accordance with the said plan and he was bound to maintain the rest of the land open. The plaintiff having accepted this condition, it is now one of the terms

lawfully annexed to his tenure of the land".

Both the trial Court as well as the first appellate court agreed with this contention of the State and held that though the revised assessment was in respect of the entire area comprised within the respective survey numbers and the permission to divert the land from agricultural to building purposes also related to the entire area, the permission was limited by the condition attached thereto. It was held that the condition was to be gathered from the correspondence, Exs. 41 to 45 between the plaintiff and the Collector. In their opinion this showed clearly that the plaintiff had agreed to build strictly in accordance with the plans and that the permission was granted on that footing.

Differing from this view, the learned Judges of the High Court held that the three 'sanads' issued to the plaintiff by the Collector must be taken to be the only contract between the parties and as the repository of the agreement between the Government on the one hand and the registered occupant on the other, that the previous correspondence was not admissible and that since the 'sanads' disclosed no such conditional permission, the Collector had no right to insist on his permission being taken for the alterations contemplated by the plaintiff in respect of the survey numbers which are the subject matter of the two suits.

3. The correctness of this view has been canvassed before us by the learned Attorney-General and we have heard elaborate arguments as to the scheme of the Code and of the relevant provisions thereof contained in Chapters V and VI. In particular our attention was drawn to Sections 45, 48, 65 to 68, and 73 of the Code. We have been furnished with a copy of Rule 56(2) under which the 'sanads' were issued as also the prescribed form for the 'sanads'. We have also been taken through the contents of the 'sanads' actually issued in these cases as well as through the concurrent findings of the first appellate court and the High Court as regards the substance of the correspondence contained in Exs. 41 to 43.

A forceful argument has been advanced to us with reference to all the above material, that the view taken by the learned Judges of the High Court is erroneous. It is unnecessary, however, to deal with the argument thus advanced since the appeals can be disposed of on a very short ground. For this purpose it is sufficient to notice Ss. 48, 65 and 67 'as they stood prior to 1913' which admittedly applied to the present case in view of the fact that the permission was granted in the years 1911 and 1912.

The relevant portions of these three sections as they stood prior to their amendment in 1913 were as follows:

"48. The land revenue liable under the provisions of this Act shall be chargeable--

(a) upon" land appropriated for purpose of agriculture;

(b) upon land appropriated for any purpose from which any other profit or advantage than that ordinarily acquired by agriculture is derived;

(c) upon land appropriated for building sites.

65. An occupant of land appropriated for purposes of agriculture is entitled by himself, his servants, tenants, agents or other legal representatives to erect farm buildings, construct wells or tanks or any other improvements thereon for the better cultivation of land or its more convenient occupation for the purposes aforesaid.

If any occupant wishes to appropriate his holding or any part thereof to any other purpose, the Collector's permission shall in the first place be applied for by the registered occupant.

The Collector, on receipt of such application, X XXX

(b) may, after due inquiry, either grant or refuse the permission applied for.

When any such land is thus appropriated to any purpose unconnected with agriculture, it shall be lawful for the Collector subject to the general orders of Government to require the payment of a fine in addition to any new assessment which may be leviable under the provisions of Section 48.

67. Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid in special cases on such terms or conditions as may be agreed on between Government and the registered occupant."

Now, there is no dispute that the permission that was granted by the Collector in the years 1911 and 1912 for diversion of the suit lands from agricultural use to non-agricultural use for building purposes related to the entirety of the area comprised within the suit survey numbers. All that is claimed on behalf! of the State is that the permission was limited by the condition that the buildings to be erected were to be in accordance with the plans then approved and that any alteration thereof requires the further permission of the Collector or a mutual agreement in respect thereof. Admittedly the basis for this contention is Section 37 of the Code. As it then stood, this section provided that nothing in Section 65 was to prevent the granting of permission in special cases on such terms or conditions as may be agreed upon between the Government and the registered occupant. It is clear from this that the grant of permission under Section 35 may be subjected to conditions. But the imposing of such conditions is to be (1) in special cases, and (2) in such cases it is to be the result of an agreement between the Government and the registered occupant. What has been pleaded in these cases in paragraph 4 of the written-statement, as set out above, is an agreement 'between the Collector' and the registered occupant and what the correspondence, Exs. 41 to 43, discloses is only an agreement, if any, 'between the Collector' and the registered occupant. There is no pleading or proof that there was any agreement between the registered occupant and 'the Government'. Nor is there any indication that applications of the kind in this area had to be treated as special cases.

Obviously "the Collector" is not the same as "the Government" nor have we been shown any rule framed by the Government which empowers the Collector to act on behalf of the Government with reference to Section 37. That the Collector is different from the Government under the Code is clear

from section 8 of the Code which shows that "the Government" shall appoint in each district an officer who shall be "the Collector" and who may exercise, throughout his district, all the powers and discharge all the duties imposed on a Collector by this Act. The learned Attorney-General could not contest this position. It is clear, therefore, that the State has not made out that there is any valid and legal condition attached to the permission granted by the Collector for the diversion of these lands from agricultural to building purposes. In this view of the matter there is no reason to reverse the declarations granted in favour of the plaintiff-respondent by the High Court.

It appears likely that in this litigation the content of Section 37 as it stood prior to 1913 was not noticed and that the defence on behalf of the State and the proof in pursuance thereof was based on Section 37 as it now stands which is as follows:

"Nothing in the last two preceding sections shall prevent the granting of the permission aforesaid on such terms or conditions as may be prescribed by the Collector, subject to any rules made in this behalf by the Government."

The plea taken in paragraph 4 of the written statement does no doubt indicate that it was realised that the condition was to be a matter of 'agreement' but it does not seem to have been appreciated that the agreement was to be between 'the Government' and the registered occupant and 'not' between 'the Collector' and the registered occupant.

4. In the result both the appeals must be dismissed with costs. But, in the circumstances, there will be only one hearing fee for both the appeals together.