

CASE NO.:
Appeal (civil) 3665-3758 of 1995

PETITIONER:
State of Gujarat

RESPONDENT:
M/s. Arvind Mills & Ors

DATE OF JUDGMENT: 04/12/2002

BENCH:
SHIVARAJ V. PATIL & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

SHIVARAJ V. PATIL J.

These appeals are by the State of Gujarat, aggrieved only by that part of the common order dated 28.10.1983 passed by the High Court of Gujarat in Special Civil Application No. 583 of 1978 and several connected applications by which the proviso to Rule 81(2) of the Gujarat Land Revenue (Amendment) Rules, 1977 was quashed.

The few facts necessary for the disposal of these appeals are that several Special Civil Applications were filed before the High Court of Gujarat challenging the validity of Gujarat Land Revenue (Amendment) Rules, 1977 (for short 'the Rules') on various grounds but during the hearing only the following issues were pressed before the High Court:-

"(3) Whether the impugned Amendment Rules of 1977 are bad in law and void since they seek to levy revenue on the land used for non-agricultural purposes retrospectively, that is, with effect from September 1, 1976 without the power or authority to enact the rules retrospectively under Section 214 of the code at all the relevant times.

(4) Whether the attempt to validate the levy, assessment and collection of the non-agricultural assessment by the Gujarat Ordinance No. 20 of 1980 or for that matter by the Gujarat Act No. 2 of 1981 was to all intents and purposes abortive.

(5) Whether the impugned Amendment Rules of 1977 are ultra vires Section 48 and/or Section 45 and/or Section 52 of the Code.

(6) Whether the impugned Amendment Rules 1977 are violative of Article 14 of the Constitution of India inasmuch as they are arbitrary, unjust and discriminatory.

(7) In any view of the matter proviso to Rule 81(2) of the impugned Amendment Rules of 1977 enjoining the assessment of the land, with effect from August 1, 1979, situate within the urban agglomerations to which the Urban Land

(Ceiling and Regulation) Act, 1976 applies, at double the rates prescribed in Table 'A' for not putting such land to non-agricultural use for which permission is granted or deemed to be granted is ultra vires Article 14 of the Constitution. We will take up for consideration the first four points simultaneously since they are interconnected."

The High Court answered issue nos 3 to 6 against the applicants in Special Civil Application No. 583 of 1978 and held issue no. 7 in favour of the applicants and struck down the proviso to Rule 81(2) of the Rules. The applicants in Civil Applications, aggrieved by the common order of the High court as against findings on issue nos. 3 to 6 came before this Court. This Court dismissed the Civil Appeal No. 82 of 1985 and other connected appeals affirming the judgment of the High court.

The State of Gujarat, as already stated above, has filed the present appeals to the extent it was aggrieved by the common judgment of the High Court. In this view, in these appeals, we are required to examine the correctness of the order of the High Court so far as it relates to striking down proviso to Rule 81(2) of the Rules.

The learned counsel for the State of Gujarat in support of the appeals urged that the High Court committed an error in quashing proviso to Rule 81(2) of the Rules. According to him, the said proviso was valid; if the persons after taking permission failed to comply with the conditions of permission by not putting the land for the purpose for which permission was obtained, land revenue at the double rate could be levied; there was no question of imposing any penalty. He tried to support the appeals pointing out to provisions of the Land Revenue Act and Rules and the provisions of the Urban Land (Ceiling and Regulations), 1976.

Per contra, the learned counsel for respondents made submissions supporting the impugned judgment of the High Court adding that there was no source of power to the State for collecting the land revenue at double the rate as is sought to be done under the proviso to Rule 81(2) in respect of the land specified therein.

In order to appreciate the rival contentions, it is necessary to look at Rule 81 to the extent it is relevant. It reads thus:

"81. Rates of non-agricultural assessment :
(1) For the purpose of determining generally the rate of non-agricultural assessment leviable, the Collector shall from time to time by a notification in the Official Gazette, divide villages, towns and cities into the following classes:-

- (A)
- (B)
- (C)
- (D)
- (E)

(2) The Assessment shall then be fixed by the Collector at the following rates with effect from the commencement of the revenue year 1976-77, namely:

Rate per square meter per annum in paise:

Non-agricultural		Residential	Industrial	Commercial	and other use	
1		2		3	4	
A		10		15	25	
	B		6		9	12
	C		4		6	9
	D		3		4	5
	E		1		1	1

Provided that in respect of lands falling within the urban agglomerations to which the Urban Land (Ceiling and Regulation) Act, 1976 applies, assessment at double the rates mentioned above shall be fixed so long as the land in question is not put to the non-agricultural use for which permission is granted or deemed to be granted."

The source of power to impose land revenue flows from Section 48 of the Bombay Land Revenue Code. It reads thus:-

"48. Manner of assessment and alteration of assessment Prohibition of use of land for certain purposes (1) The land revenue leviable on any land under the provisions of this Act shall be assessed, or shall be deemed to have been assessed, as the case may be, with reference to the use of that land-

- (a) for the purpose of agriculture,
- (b) for the purpose of building, and
- (c) for a purpose other than agriculture or building.

(2) Where land assessed for use for any purpose is used for any other purpose, the assessment fixed under the provision of this Act upon such land shall, notwithstanding that the term for which such assessment may have been fixed has not expired, be liable to be altered and fixed at a different rate by such authority and subject to such rules as the State Government may prescribe in this behalf.

(3) Where land held free of assessment or condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

(4) The Collector or a survey officer may, subject to any rules made in this behalf under Section 214, prohibit the use for certain purposes of any unalienated land liable to the payment of land revenue, and may summarily evict any holder who uses or attempts to use the same for any such prohibited purpose."

The High Court while dealing with the validity of the proviso to Rule 81(2) has stated that it has not been able to appreciate as to what is the purpose underlying the said proviso; if it is to penalize any occupant converting the land to any non-agricultural use other than the one for which permission is granted or deemed to have been granted, it would certainly amount to penalty and would be beyond the rule making power of the State Government; if object is not to penalize any occupant, then it would be certainly violative of Article 14 inasmuch as the classification of the land not put to non-agricultural use for which permission is granted are deemed to be granted and subjecting it to the assessment at double the rate prescribed by the respective use in Table-A would not be an intelligible and rational classification because on the plain reading of the proviso, it was capable of being interpreted and applied to the class of innocent occupants, who may be, for reasons beyond control, unable to put the land to the non-agricultural use for which permission is granted or deemed to be granted. The High Court further observed the classification envisaged in the proviso has no rational nexus with the object of the Code which is to collect the revenue according to the use of the land.

The proviso in question covers the land falling within the Urban Agglomerations to which the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Ceiling Act') applies and the assessment in respect of such lands shall be at double the rates mentioned in the table so long such land is not put to the agricultural use for which permission is granted or deemed to be granted. It is clear from the provisions contained in Section 48 extracted above, the land revenue leviable on any land under the provisions of the Land Revenue Act shall be assessed or shall be deemed to have been assessed, as the case may be, with reference to the use of the land falling under different categories stated therein. In our view, Section 48 does not authorize levy of land revenue for the non use of the land covered by the proviso. If after taking permission under the provisions of Ceiling Act, a person does not put the land for the non-agricultural use, it is open to the authority under the said Act to take appropriate action for non-compliance of the conditions imposed while granting permission under the provisions of the said Act. We find it difficult to agree with the argument of the learned counsel for the State that for breach of condition of permission granted under the Ceiling Act, action can be taken under the provisions of the Land Revenue Act by virtue of the proviso in question. Under Section 48 of the Act, land revenue can be imposed for the use of the land and not for the non-use of the land. We also find substance in the reasons recorded by the High Court in striking down the proviso to Rule 81(2).

Thus, for the aforementioned reasons, we do not find any merit in these appeals. Consequently, they are dismissed. No order as to costs.