

Dera Baba Ram Gir v. The State of Haryana, etc. (Tuli, J.)

(7) For the reasons given above, I hold that the petitioner was a person "engaged in the construction of any work relating to the Beas Project" immediately before the constitution of the Beas Construction Board, within the meaning of the first proviso to subsection (3) of section 80 of the Punjab Reorganisation Act, 1966, and, therefore, continued to be the employee of the Board on or after October 1, 1967. He had to report for duty thereafter to the said Board who had to issue the posting orders to him. After that, he could be returned by that Board to the Punjab State only after consulting that Government and obtaining the previous approval of the Central Government. He could not be returned to the Punjab State as was done by the Beas Construction Board authorities on October 26, 1967. Respondent 3 is, therefore, directed to pass appropriate orders for the posting of the petitioner in case he reports to it for duty and to pass a proper order with regard to the period with effect from June 17, 1967, to the date he reports for duty in accordance with the rules. The petitioner will also be allowed the necessary relief by way of sanction of leave and payment of emoluments for the said period, etc., by respondent 3 to which he may be entitled under the service rules, and no relief will be refused to him merely because he did not report for duty to respondent 3 on or after October 1, 1967. His case will be dealt with by respondent 3 as if he had become its employee on October 1, 1967. The writ petition as against respondents 1 and 2 is dismissed. The necessary writ shall issue to respondent 3 in the above terms. The writ petition is accordingly allowed against respondent 3 only with no orders as to costs.

K. S. K.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

DERA BABA RAM GIR,—Petitioner.

versus

THE STATE OF HARYANA, ETC.,—Respondents.

Civil Writ No. 404 of 1971.

December 13, 1971.

*Punjab Land Revenue (Surcharge) Act (XXXVI of 1954)—Section 2—
Punjab Land Revenue (Special Charges) Act (VI of 1958)—Section 3—
Payment of surcharge and special charges under—Muafidar—Whether liable
to make such payment.*

Held, that the language of section 2 of Punjab Land Revenue (Surcharge) Act, 1954 and section 3 of Punjab Land Revenue (Special Charges) Act, 1958, is unambiguous in terms according to which only a landowner who pays land revenue, and not a landowner in respect of whose land revenue is assessed, is liable to pay the surcharge and the special charges. A person who is granted *muafi* is an owner of land in whose favour the land revenue is released, that is, he is not liable to pay any land revenue to the Government in spite of the fact that the amount of land revenue might have been assessed. A *muafidar* is not even an assignee of land revenue. Hence a *muafidar* being a landowner who does not pay the land revenue, is not liable to pay any surcharge or special charges under the above said Acts.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of Certiorari, Mandamus or any other appropriate writ, order or direction be issued quashing the levy by the respondent No. 1 of the Surcharge and Special Surcharge on the lands of the petitioner Dera.

A. N. Mittal, Advocate, for the petitioner.

Hari Mittal, Deputy Advocate-General, (Haryana), for the respondents.

JUDGMENT.

TULI, J.—The petitioner-Dera was granted *muafi* of land revenue by the erstwhile State of Patiala by a *Sanad* dated Poh 19, Sambat 1960 BK, equal to January 2, 1904 A.D. It was based on the order passed by the Assistant Settlement Officer, Patiala Circle, and the order of the Settlement Commissioner, Patiala. A copy of the order of the Assistant Settlement Officer, Patiala Circle, giving the terms of the grant has been filed by the respondents with their return as annexure R. 2/III. Its translation in English made by the office is not quite correct. The correct translation is as under:—

- “1. Previously, the total *jamai* was Rs. 1,106 which consisted of land revenue amounting to Rs. 1,006 and the *swai* (cesses) including miscellaneous demands of Rs. 100. On account of the *muafi* of the whole village, the Bisweddar pays only the *swai* and other miscellaneous demands.
- (2) The revised total demand is Rs. 1,750 consisting of Rs. 1,523 on account of land revenue and Rs. 227 on account of *swai*. Out of the *swai* amount, the Bisweddar will pay the amount which remains after deducting Rs. 70 on account of Lambardari and Rs. 95 in the category of *muafi* (which has

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been determined at the rate of Rs. 6-4-0 per cent of the land revenue) with effect from Kharif 1960 and according to the desire of the Bisweddar, additional *sarsari parta* at the rate of 7 annas 2 pies per *bigha kham* on cultivated land may be fixed. There is no tenant like the owner. The area of the whole village is 19,098 *bighas kham* out of which 12,915 *bighas kham* is under cultivation and 6,183 *bighas kham* is uncultivated. Out of the entire area, 12,915 *bighas kham* is included in the *bachh* while area measuring 6,183 *bighas kham* is kept out of the *bachh*.

- (3) The whole of the village is *muaf* to the Bisweddar on behalf of the Government, sanction whereof has been granted on a separate file. There is no *muafi* with regard to the Zamindari.
- (4) There is no non-occupancy tenant.
- (5) There is no *nankar*.
- (6) No *malba* (village expenses) was previously fixed. In future too no amount on account of village expenses should be assessed.
- (7) The previous instalments were fixed as 3/5th in Kharif and 2/5th in Rabi crop and they should be continued in future also.
- (8) Since the entire village is owned by a single proprietor, the village should be entered as *khalis zamindari*."

A copy of the order of the Settlement Commissioner, Patiala, dated January 2, 1904, (Annexure R. 2/II) reads as under:—

"The revenue of this village is released to the Dera Ramgir therein situated in the name of the recognised custodian for the time being. Cesses will be collected as proposed by the A.S.O. The *Muafi* is conditional for the proper maintenance of the Dera as a charitable and religious institution."

The English translation of the *sanad muafi* issued by the Government of Patiala to Dera Ramgir under the management of Harjas Gir is as under:—

"As a result of enquiry and review of *muafis* in the present settlement conducted for the first time according to law, *muafi* of land revenue for cash regarding land (in all 19

squares) is granted to you as per details given in the statement noted below:—

Hence, this *sanad* is granted and you are ordered to enjoy this full *muafi* by complying with the terms and conditions of the *muafi*.”

In the statement mentioned in the *sanad* the condition for enjoyment of the *muafi* is recorded as under:—

“*Jamai* of this village is released in favour of present manager of Dera Ram Gir. The condition of *muafi* is that the Dera should be maintained as religious and charitable institution.”

On the basis of these documents no land revenue was ever charged from the petitioner-Dera during the period the Patiala State and the Pepsu State existed. The Punjab Legislature passed the Punjab Land Revenue (Surcharge) Act, 1954 (hereinafter called the 1954 Act), section 2 whereof provided for the levy of surcharge on land revenue, which reads as under:—

“(2)1 With effect from the Rabi harvest of the agricultural year 1953-54, or, where this Act comes into force in any area by notification issued under sub-section (3) of section 1, with effect from such harvest as the State Government may, by notification direct that notwithstanding anything to the contrary contained in the Punjab Land Revenue Act, 1887 (Act XVII of 1887), every landowner who pays land revenue in excess of ten rupees shall be liable to pay a surcharge thereon to the extent of one-quarter of the land-revenue if the amount payable by him as land revenue does not exceed thirty rupees, and two-fifths of the land revenue where the amount payable by him exceeds thirty rupees.

Provided that the levy of surcharge shall not have the effect of adding to the value of any Jagir or any assignments of Land Revenue.

(2) The surcharge shall continue to be charged and levied so long as the assessment of land revenue prevailing at the commencement of this Act or, in the case of an area in which this Act comes into force by notification issued under sub-section (3) of section 1 prevailing on the date of such notification continues to be in force.

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(3) A land-owner, liable to pay the surcharge, whose land is situated within the jurisdiction of more than one patwari, and who has not, before the commencement of this Act, comes into force in any area, as the case may be, given such information, shall within thirty days from the commencement of this Act or from the said date, give written information of the details of the total land revenue payable by him to the patwari of every revenue estate in which any part of such holding is situate, and shall also submit a copy thereof to the Tahsildar having jurisdiction.

(3A) If a land-owner fails to furnish the information required in the foregoing sub-section or furnishes the information which is wrong in material particulars, he may be charged a penalty up to twelve times the amount of surcharge recoverable from him under this Act:

Provided that a land-owner shall be deemed to have furnished the required information if he furnishes it within one month of the commencement of the Punjab Land Revenue (Surcharge) (Amendment) Act, 1957.

(4) The surcharge and the penalty if any shall be recoverable as land revenue and in the manner prescribed by rules made by the State Government in this behalf."

In 1958, the Punjab Land Revenue (Special Charges) Act, 1958 (hereinafter called the 1958 Act), was enacted, section 3 whereof provided for the levy of special charges and this section reads as under:—

~~and~~

"3. With effect from the Rabi harvest of the agricultural year 1957-58, or, where this Act comes into force in any area by notification issued under sub-section (3) of section 1, with effect from such harvest as the State Government may, by notification, direct, and notwithstanding anything to the contrary contained in the Punjab Land Revenue Act, 1887 (Act No. XVII of 1887), every landowner who pays land revenue in excess of fifty rupees, shall be liable to pay a special charge thereon in accordance with the rates specified in the Schedule."

Under both these Acts, the surcharge and the special charges are payable by a landowner who pays land revenue. The rate of surcharge depends on the amount of the land revenue paid while the rate of special charges is uniform on the amount of land revenue paid by a landowner in excess of fifty rupees which includes the surcharge levied under the 1954 Act. For the Kharif crop 1970, the petitioner-Dera was asked to pay surcharge amounting to Rs. 542.76 and special charges amounting to Rs. 4,601.43 in accordance with the above said Acts and these two demands have been challenged in the present writ petition on the ground that the petitioner-Dera is not a landowner who pays land revenue and, therefore, is not covered by section 2 of the 1954 Act or section 3 of the 1958 Act.

(2) Written statement has been filed on behalf of the respondents to which a replication has also been filed.

(3) The point for determination in the case is whether the petitioner-Dera is a landowner who pays land revenue as it is only such a landowner who is liable to pay the surcharge and the special charges under the two Acts mentioned above. The documents, referred to above, that is, the order of the Assistant Settlement Officer, the order of the Settlement Commissioner and the *sanad* issued to the Dera, go to show that the entire land revenue had been released in favour of the Dera and that the Dera was the only landowner of the village so that the effect of the release of the land revenue in its favour was that the Dera was not liable to pay any land revenue to the State. In the return, it has been stated that during the year 1967-68 A.D. the Dera paid Rs. 158.00 on account of land revenue and also paid the demand which has been challenged in this petition during the pendency of the writ petition. The petitioner has explained that the present demand was paid by it in order to avoid the realisation thereof by the State by coercive methods because this Court refused to stay the recovery of that demand. In 1967-68, the land revenue was paid under a mistake. The payment of Rs. 158.00 on account of land revenue for the year 1967-68 does not stop or preclude the petitioner-Dera from disputing its liability to pay the surcharge or the special charges on the ground that the same are not recoverable from it.

(4) In order to determine the liability of the petitioner-Dera for the payment of surcharge and special charges, it is necessary to understand the nature and characteristics of a *muafi* grant. In the

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Glossary of Judicial and Revenue Terms by Wilson, 1940 Edition, the meaning of *muafi* is stated as—

“Forgiven, remitted : substs., forgiving, remission or exemption from the demands of the State: a grant of land free of assessment : the word is in common use to signify exempt or free from duty or tax, as lands, goods, etc. : it also designated a particular grant formerly made by Zamindars and the revenue officers of the government, which became hereditary and transferable, and was also applied to lands which were held free of revenue on condition of service.”

(5) In *Shiromani Gurdwara Prabandhak Committee v. Karam Singh*, (1), a Division Bench held—

“The difference between *muafi* and *jagir* is that the former is remission of land revenue to the owner whereas the latter is an assignment of land revenue which is collected and paid to the *jagirdar*. The *jagirdar* may subsequently acquire the property and if he does, the grant technically becomes ‘*muafi*’ though it always continues to be shown as a *jagir*.”

It is thus clear that the landowner who is granted *muafi* is not liable to pay any revenue. Therefore, he cannot be said to be a landowner who pays land revenue. The Legislature was quite aware of the existence of *muafidars* and *muafi* grants and if it was intended, as has been submitted by the learned counsel for the respondents, to levy surcharge and special charges on the basis of the land revenue assessed irrespective of the fact whether a landowner actually paid any land revenue or not, a provision should have been made to make that intention clear. The language of section 2 of the 1954 Act and section 3 of the 1958 Act is unambiguous in terms according to which only a landowner who pays land revenue, and not a landowner in respect of whom land revenue is assessed, is liable to pay the surcharge and the special charges. Again, in the proviso to sub-section (1) of section 2 of the 1954 Act, a provision could be made with regard to the *muafidars*, as has been done with regard to the *jagirs* and assignments of land revenue. A *muafidar* is not an assignee of land revenue. He is the owner in whose favour the land revenue is released, that is, he is not liable to pay any land

(1) A.I.R. 1930 Lah. 46.

revenue to the Government in spite of the fact that the amount of land revenue might have been assessed.

(6) In view of the nature of a *muafi* grant, the *muafidar* is a landowner who does not pay the land revenue and, therefore, is not liable to pay any surcharge under the 1954 Act or special charges under the 1958 Act. The demand for such amounts made from the petitioner-Dera is, therefore, illegal and has to be quashed.

(7) For the reasons given above, I accept this writ petition and quash the demand for the payment of surcharge and special charges made from the petitioner-Dera for the Kharif crop 1970. As the point was not free from difficulty, the parties are left to bear their own costs.

K.S.K.

LETTERS PATENT APPEAL

Before Harbans Singh, C.J., and R. S. Sarkaria, J.

RANBIR SINGH, ETC.—Appellants.

versus

MANGAL SINGH, ETC.—Respondents.

Letters Patent Appeal No. 227 of 1967.

January 3, 1972.

Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act (V of 2007 Bk)—Section 29—Prohibition on alienation under—Whether begins immediately after the publication of notification for consolidation—Pendency of consolidation proceedings—Whether provides an additional condition to such prohibition.

Held, that the object of section 29 of Patiala and East Punjab States Union Holdings (Consolidation and Prevention of Fragmentation) Act, 2007 Bk is that as soon as the notification for consolidation under section 14(1) of the Act is issued and the intention of the Government to effect consolidation in a particular village becomes known, the landowners may not enter into *mala fide* and bogus transactions in order to affect the places where their major portions are located. If a transaction is a genuine one,