

SMT. LAXMIRAJ S. PATIL AND ORS.

v.

BADASHAH SULTAN MUTWALI

MARCH 22, 1995

[N. VENKATACHALA AND SUJATA V. MANOHAR, JJ.]

Bombay Tenancy and Agricultural Lands Act, 1948 :

S.88-B—Exemption Certificate—Income from lands appropriated for the purposes of the Trust under Condition (ii) of the proviso—Confined to income from such lands for which exemption certificate sought for and not from other lands.

Appellants were tenants of some of the lands of a certain Trust of which the Respondent was the Managing Trustee. Respondent made an application under Rule 52(1) of the Bombay Tenancy and Agricultural Lands Rules, 1956 before the Deputy Collector for grant of exemption certificate under S.88-B of the Act in respect of its lands on which the appellants were tenants. The Deputy Collector granted the certificate.

On a revision preferred by the appellants, the Revenue Tribunal held that the exemption certificate should not have been granted when it was not shown by the Trust that the entire income of all its lands had been appropriated for the purpose of the Trust as was required by Condition (ii) of the proviso to clause (b) of Sub-section (i) of S.88-B of the Act. Respondent filed a Civil Application which was allowed. Appellants filed a Writ Petition challenging the validity of the Certificate, and the same was dismissed by the High Court. Hence this appeal.

Dismissing the appeal, this Court

HELD:1. As seen from the provision in Section 88-b(1) and 88-B(2) of the Bombay Tenancy and Agricultural Lands Act, 1948 exemption certificate could be obtained by a trust in respect of its lands in occupation of tenants as provided for therein. The object of obtaining such exemption, having regard to the scheme of the provision, is to allow the Trust to retain the income of its lands, even where such lands are given to tenants for

cultivation. There is no reason why the Trust should establish that the entire income derived by it from lands other than the lands in respect of which it seeks exemption certificate, was being appropriated for the Trust. The entire income of "such lands" required to be shown to have been appropriated for purposes of the Trust under Condition (ii) of the proviso is confined to the income derived lands for which exemption certificate is sought by the Trust and not its other lands. [For to hold that the Trust when applies for exemption certificate in respect of a few of its lands is required to establish for satisfying condition (ii) of the proviso that the entire income derived from all its other lands, would amount to asking the Trust to establish something which the Legislature could not have intended having regard to the fact that such requirement could only by an unwarranted burden placed on the Trust with no genuine purpose to be serve by it.] [932-D-G]

(Condition (ii) of the proviso to Clause (b) of Sub-section(1) of Section 88-B of the Act, requires a trust which seeks to obtain an exemption certificate under Section 88-B of the BT&AT Act in respect of certain lands, to establish before the Collector that the entire income derivable by it in respect of only such lands for which exemption certificate is sought was being appropriated for the purposes of the Trust and not the entire income derivable by it in respect of its other lands for which no exemption certificate was sought.) [932-H, 933-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 380 of 1984.

From the Judgment and Order 7.11.93 of the Bombay High Court in S.C.A. No. 3186 of 1978.

U.R. Lalit, P.H.. Parekh, Uday U. Lalit and E.R. Kumar, with him for the Appellants.

V.N. Ganpule, V.B. Goshi and A.B. Lal, with him for the Respondent.

The following Order of the Court was delivered :

Substitution application is allowed.

We have heard learned counsel for the parties. The short question which arises for our consideration in this appeal relates to requirement of Condition (ii) of the proviso to Clause (b) of sub-section (1) of Section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948 - "The BT&AL Act".

Respondent is the Managing Trustee of the Hajarat Pir, Babujmal, Deosthan Public Trust, Kolhapur. The appellants were tenants of some of the lands of that Trust under the BT&AL Act. The respondent made an application under Rule 52(1) of the Bombay Tenancy and Agricultural Lands Rules, 1956 before the District Deputy Collector, Karvir Division, Kolhapur seeking grant of an exemption certificate under Section 88-B of the BT&AL Act in favour of the Trust in respect of its lands on which the appellants were the tenants. That Collector on an enquiry held under sub-section (2) of Section 88-B of the BT&AL Act, being satisfied that the Trust was an institution for public religious worship registered under the Bombay Public Trusts Act, 1950 as required by Clause (i) of the proviso to Sub-section (1) of Section 88-B of the BT&AL Act and the entire income from the lands for which exemption certificate was sought was appropriated for the purpose of the Trust as required by Clause (ii) of the proviso to Sub-section (1) of Section 88-B thereof, granted the certificate of exemption sought for, on May 27, 1963.

The appellants challenged the validity of the certificate so granted, by filing a revision petition in that behalf before the Maharashtra Revenue Tribunal, Kolhapur - "the Tribunal". The Tribunal taking the view that the exemption certificate should not have been granted by the Collector when it was not shown on behalf of the Trust that the entire income of all lands of the Trust had been appropriated for the purpose of the Trust, as was required by Condition (ii) of the proviso to Clause (b) of sub-section (1) of Section 88-B of the BT&AL Act, made an order allowing that Revision Petition. The respondent questioned the correctness of that order of the Tribunal by filing Special Civil Application No. 3186 of 1978 before the High Court of Bombay. In the meantime, when in one of that cases, the Bombay High Court held that the Tribunal had no jurisdiction to entertain a revision petition against grant of certificate of exemption under Section 88-B of the BT&AL Act, the appellants challenged the validity of the certificate of exemption granted by the Collector in favour of the Trust by

filing Writ Petition No. 3771 of 1981. The High Court by its judgment dated November 7, 1983 while allowed the Special Civil Application No. 3186 of 1978 of the respondent, dismissed Writ Petition No. 3771 of 1981 of the appellants. It is that order of the High Court which has been impugned by the appellants in this appeal by special leave.

As the arguments of learned counsel for the parties in the appeal were confined to the requirement of Condition (ii) of the proviso to Clause (b) of Sub-section (1) of Section 88-B of the BT&L Act, their sustainability calls to be examined.

Section 88-B of the BT&AL Act, insofar as it becomes necessary to deal with the said arguments, reads thus:

88-B (1) Nothing in the foregoing provisions except sections 3, 4B, 8, 9, 9A, 9B, 9C, 10, 10A, 11, 13 and 27 and the provisions of Chapters VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above, shall apply -

(a)

(b) to lands which are the property of a trust for an educational purpose, a hospital, Panjarapole, Gaushala or an institution for public religious worship:

Provided that -

(i) such trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950, and

(ii) the entire income of such lands is appropriated for the purposes of such trust;

(2) For the purposes of this section, a certificate granted by the Collector, after holding an inquiry, that the conditions in the proviso to Sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf."

It was not disputed before us that the Collector who held the inquiry as required by Sub-section (2) of Section 88-B of the BT&AL Act issued

the certificate of exemption in favour of the Trust in respect of a few of its lands of which the appellants were the tenants, on being satisfied that the Trust is registered under the Bombay Public Trust Act, 1950 and the income of such lands had been appropriated for the purposes of such trust. What was argued on behalf of the appellants was that Condition (ii) in the above proviso required the Trust to establish that the entire income of all its tenanted lands was appropriated for its purposes for obtaining the grant of a certificate of exemption under Section 88-B of the BT&AL Act. On the other hand, it was argued for the respondent that Condition (ii) of the above proviso required the Trust to establish that the entire income of merely the lands for which exemption certificate was sought for was being appropriated for the purposes of trust for obtaining the exemption certificate. As seen from the provision in Section 88-B(1) and 88-B(2) of the BT&AL Act exemption certificate could be obtained by a trust in respect of its lands in occupation of tenants as provided for therein. The object of obtaining such exemption, if we have regard to the scheme of the provision, is to allow the Trust to retain the income of its lands, even where such lands are given to tenants for cultivation. Thus, if the object of the provision is to save the income of the lands of the Trust for appropriating for purposes of this Trust, we are unable to see as to why the Trust should establish that the entire income derived by it from lands other than the lands in respect of which it seeks exemption certificate, was being appropriated for the Trust. The entire income of such lands required to be shown to have been appropriated for purposes of the Trust under Condition (ii) of the proviso, as seen therefrom, is confined to the income derived from such lands for which exemption certificate is sought for by the Trust and not its other lands, for to hold that the Trust when applies for exemption certificate in respect of a few of its lands is required to establish for satisfying Condition (ii) of the proviso that the entire income derived from all its other lands, would amount to asking the Trust to establish something which the Legislature could not have intended having regard to the fact that such requirement could only be an unwarranted burden placed on the Trust with no genuine purpose to be served by it.

Hence, Condition (ii) of the proviso to Clause (b) of Sub-section (1) of Section 88-B of the BT&AL Act, in our view, requires a trust which seeks to obtain an exemption certificate under Section 88-B of the BT&AL

Act in respect of certain lands, to establish before the Collector that the entire income derivable by it in respect of only such lands for which exemption certificate is sought was being appropriated for the purposes of the Trust and not the entire income derivable by it in respect of its other lands for which no exemption certificate was sought.

In the result, we dismiss this appeal, however, without costs.

G.N.

Appeal dismissed