

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2130 OF 1996

1. Shri Samastha Aher Nhavi Panch Trust
through its trustee Shri Bhika Harchand
Thakare,
occupation service,
2. Shri Laxman Atmaram Borase
occupation business.
3. Shri Hiralal Pandu Bilade deleted vide Court order
dated 02.03.2012.
4. Shri Sukhlal Shankar Borale
occupation business,

All r/o Talode, Tq. Talode
Dist. Dhule. Petitioners

Versus

1. Shri Paulad Deochand Patil
(deceased through LRs)
 - 1A) Dashrath Poulad Patil
(deceased through LRs)
 - 1A-1) Sambhaji s/o Dashrath Patil
age 40 years, occ. agriculture
r/o Pratap Nagar, Taloda
Tq. Taloda, Dist. Nandurbar
 - 1A-2) Ravindra s/o DAshrath patil
age 35 years, occ. agriculture
r/o Pratap Nagar, Taloda
Tq. Taloda, Dist. Nandurbar
 - 1A-3) Kusumbai w/o Manu Patil
age 44 years, occ. household
r/o Dhondai
Dist. Nandurbar.

1A-4) Kalpanabai w/o Radha Patil
age 32 years, occ. household
r/o Dongargon
Tq. Shahada, Dist. Nandurbar

1A-5) Ashabai Balu Patil
Age 30 years, occ. household
r/o Mayur Colony,
Dhule.

1B) Supadu Poulad Patil
age major,
r/o Chinoda, Tq. Taloda
Dist. Nandurbar

2. The Sub Divisional Officer
Taloda Division, Taloda
Dist. Nandurbar

Respondents

Mr. S.P. Shah, Advocate for the petitioners.

Mrs. M.A. Deshpande, AGP for respondent no. 2.

Mr. C.R. Deshpande, Advocate for respondents no. 1A-1 to 1A-5 & 1-B.

CORAM : M.S. KARNIK, J.

DATE : 6th August, 2019.

JUDGMENT :

1. Petitioner - Shri Samastha Aher Nhavi Panch Trust challenges the order dated 30.08.1993 passed by the Sub-Divisional officer, Taloda Division, Taloda, revoking the exemption granted to the petitioner-trust under section 88-B(i) of the Maharashtra Tenancy and Agricultural Lands Act (hereinafter referred to as 'the Act' for short) by the District Deputy Collector, Nandurbar, Division Nandurbar.

2. The dispute concerns the agricultural land in survey no. 102 admeasuring 4 H and 6 R equal to 10 acres and 1 guntha situate

at village Chinode, Tq. Talode, Dist. Nandurbar. The trust was duly registered under the Bombay Public Trusts Act on 28.08.1953. The said land was mentioned as one of the trust properties. The purpose of the trust was welfare and upliftment for educational purpose of the Nhavi community. The Sub-Divisional Officer, Nandurbar, granted exemption certificate to the trust vide order dated 04.12.1959. The said land was leased by the petitioner-trust in favour of respondent no. 1. Respondent no. 1 had initiated proceedings under section 32G of the Act. The proceedings were resisted by the petitioner-trust contending that it had obtained exemption certificate and respondent no. 1 was not entitled to statutorily purchase the said land. Vide order dated 25.12.1972, the proceeding came to be withdrawn.

3. By the notice dated 31.08.1979 issued by the petitioner to respondent no. 1, tenancy of respondent no. 1 is terminated. Petitioner filed a suit being Regular Civil Suit No. 28/1979 in the Court of the learned Civil Judge, Junior Division, Taloda, for possession of the suit land and other reliefs.

4. Respondent no. 1 filed Writ Petition No. 3464/1980 in this Court challenging the exemption certificate obtained by petitioner under Section 88B of the said Act. This Court, vide judgment and order dated 27.11.1991 allowed the petition and remanded the matter back to the Sub-Divisional Officer with necessary directions. At this stage, it would be pertinent to refer to the operative portion of the order passed by this Court in Writ Petition No. 3464/1980 which reads thus :

a) The Sub-Divisional Officer, Nandurbar Division, Nandurbar, District Dhule, shall serve notice on the petitioner-tenant and respondent no. 1 landlord, hear both the parties and allow them to lead the necessary evidence and then decide whether the respondent no. 1 Trust has duly complied with the prescribed conditions of exemption. The said authority shall pass a speaking order and shall decide either to confirm the certificate dated 15th September 1959 which is already granted or to revoke the said certificate, if the said authority comes to the conclusion that the respondent no. 1 Trust has not complied with the prescribed conditions of exemption. The Sub-Divisional officer, Nandurbar Division, shall endeavour to complete the proceedings and pass a speaking order latest by 31st March 1992, as it is a very old matter.

b) Interim stay of proceedings in Regular Civil Suit No. 32 of 1980 is vacated with immediate effect. The learned Civil Judge, Junior Division, Taloda, District Dhule, shall fix the hearing of the said suit on a date after 31st March 1992 and shall proceed with the hearing of the said suit thereafter expeditiously and in accordance with law. The learned Civil Judge shall endeavour to dispose of the said suit latest by 31st December 1992. If the certificate of exemption already granted on 15th September 1959 is confirmed by the Sub-Divisional Officer, it would be treated by the civil court as conclusive evidence of the compliance of the conditions in accordance with the mandate of sub-section (2) of Section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948. If the said certificate is revoked by the Sub-Divisional Officer, the Civil court shall permit the respondent n. 1 plaintiff to adduce evidence and rove to the satisfaction of the court that the respondent no. 1 is a trust falling within the category of rusts specified in section 88B(1) of the said Act i.e.

- (1) that the said trust is a registered trust under the Bombay Public Trust Act, 1950 and
- (2) that the entire income of the suit land is appropriated for the purpose of such trusts.

5. In terms of the order passed by this Court, the Sub-Divisional Officer proceeded to hear Tenancy Appeal No. 18/1992 filed by the petitioner-landlord. During the course of appeal, on behalf of the petitioner-trust, one of the trustees Shri Laxman Atmaram Borse was examined. On behalf of respondent no. 1, Supdu Polad Patil, the heir of respondent no. 1, was examined. The Sub-Divisional Officer, by the impugned order, revoked the exemption certificate dated 04.12.1959 issued in favour of the petitioner.

6. Learned counsel for the petitioner, assailing the order passed by the Sub-Divisional Officer, would submit that the Sub-Divisional Officer was not justified in rejecting the appeal in as much as the exemption was operative in favour of the petitioner-trust right from 1959. He would submit that the Sub-Divisional Officer has not considered the evidence of the witness examined on behalf of the petitioner-trust, in its proper perspective. According to him, the witness has clearly deposed that the trust is involved in public purpose, in as much as, the funds are used for educational purpose. He would also invite my attention to the deposition of the witness, who according to him, categorically stated that the object of the trust is for public religious worship. He would further submit that the lease rent of Rs. 62/- per year is utilised for the object of the trust. According to him, there is no cross-examination of the witness of the petitioner-trust by the

respondent on the point that the object of the trust is for educational purpose or that it is an institution for public religious worship. Learned counsel for petitioner would further submit that the Tahsildar, while issuing the certificate in the year 1959, had conducted an enquiry. He would submit that even the Sub-Divisional Officer has noted that since the matter is old one, the papers are not traceable and hence, the enquiry was proceeded in the absence of original case papers. According to him, even the order of the Sub-Divisional Officer records that, consequent upon the enquiry, exemption under section 88B of the Act is granted in favour of the petitioner.

7. Learned counsel for the respondents, on the other hand, would support the order passed by the Sub-Divisional Officer. He invited my attention to the findings recorded by the Sub-Divisional Officer. According to him, the findings cannot be said to be perverse or contrary to the evidence on record so as to warrant interference. He, therefore, submits that no interference is warranted in the impugned order.

8. Heard learned counsel for the respective parties. There is no dispute that the petitioner-trust is a public trust registered under the Bombay Public Trust Act. The agricultural land which is in occupation of respondent no. 1 was donated to the trust by Sant Sena Maharaj. Pursuant to the directions issued by this Court in Writ Petition No. 3464/1980, the Sub-Divisional Officer permitted the parties to lead evidence.

9. At this stage, it would be material to reproduce the relevant

portion of section 88B(i) of the Act, which reads thus :

88B Exemption on certain provisions to land of local authorities, universities and trusts

(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) to lands held or leased by a local authority, or University established by law in the [Bombay area of the State of Maharashtra]; and

(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;

(c) to lands assigned or donated by any person before the 1st day of August 1956 for the purpose of rendering any of the following services useful to the community.

Reading of these provisions would reveal that, for the petitioner-trust to qualify for exemption under Section 88B(i) of the Act, it has to be shown that the lands, which are the properties of

the trust, are utilised for education purpose or an institution for public religious worship.

10. The evidence of Laxman Borse, who deposed on behalf of the petitioner, indicates that the suit land was donated to the trust by Sant Sena Maharaj. Further, it is stated by him in his evidence that the trust is receiving lease rent of Rs. 62/- per year, which is being utilised by the trust to meet the expenses. He further deposed that it is not sufficient to meet the expenses and secure the object for which the trust is established and therefore, the trust is in need of the suit land for which they have filed a suit seeking possession. This witness has further deposed that the only source of income for the trust is the house property and the agricultural land. In the cross-examination, this witness has deposed that the beneficiaries of the trust are the members of the Nhavi community. Insofar as religious activities are concerned, apart from celebrating the birth anniversary of Sant Namdeo Maharaj, the death anniversary of Sant Sena Maharaj is also observed. For this, the trust makes provisions for offering meals to the devotees, *poojas*, *bhajan* and *keertan* etc. He further stated that, every year an expenditure of Rs. 3,000/- to Rs. 4,000/- is incurred. He further stated that apart from the lease rent of Rs. 62/- per year received from the agricultural land in possession of respondent no. 1, the trust also receives yearly rent of Rs. 500/- from the house property.

11. It is pertinent to note that, though the petitioner has come out with a specific case that the object of the trust is educational purpose, no documentary evidence has been produced on record to

indicate that the activities which the trust undertakes is for educational purpose for the members of the community. Infact, according to petitioners, they are hardly receiving an income of Rs. 562/- per year which, according to them, is not sufficient to meet the expenditure of the trust. Except the bare words of the witness of the petitioners that the object of the trust is promoting education, there is nothing on record to substantiate this contention. So far as the public religious worship is concerned, except observing the death anniversary of Sant Shri Sena Maharaj and celebrating the birth anniversary of Sant Namdeo Maharaj, nothing is placed on record to demonstrate as to how the trust can be said to be an institution for public religious worship so as to qualify for exemption under Section 88B(i) of the Act. Even otherwise there is nothing on record to demonstrate that the lands which are properties of the trust are for educational purpose or institution of public religious worship to qualify for an exemption under Section 88B of the Act.

12. I have gone through the order passed by the Sub-Divisional Officer. The Sub-Divisional Officer, by a reasoned order and on the basis of the materials on record, has concluded that the petitioner-trust could not prove that it falls within the exempted category provided under Section 88B of the Act. I see no reason to interfere with the findings recorded by the Sub-Divisional Officer.

13. At this stage, it would be pertinent to observe that this Court, while considering the issue of exemption in accordance with the mandate of Section 88B, has also observed that, if the certificate is revoked by the Sub-Divisional Officer, the Civil Court

shall permit the petitioner-trust to adduce evidence and prove to the satisfaction of the Court that the petitioner-trust falls within the category of trust specified in Section 88B(1) of the Act.

14. In view of filing of this petition, the proceedings before the trial Court remained stayed. As the suit is of the year 1979, it is directed that the trial Court shall decide the suit expeditiously and in any event, within a period of six months from today. The parties to co-operate with the trial Court and shall not seek unnecessary adjournments. While deciding the suit, the trial Court shall abide by the directions issued by this Court in Writ Petition No. 3464/1980 as regards permitting the petitioner-trust to adduce evidence and prove to the satisfaction of the Court that petitioner-trust is a trust falling within the exempted category.

15. It is made clear that the observations made by me are limited to the controversy that arises from the order passed by the Sub-Divisional Officer and, while deciding the suit, the trial Court will not be influenced by the observations made by me.

16. Petition is accordingly dismissed. It is made clear that the interim order granted by this Court staying the trial of the suit stands vacated in view of dismissal of this petition. Rule is discharged with no order as to costs.

(M.S. KARNIK, J.)

dyb/