IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10245 OF 2017

Smt. Hirabai Anna Patil	]	
Age: 85 years, Occupation Agriculture	]	
R/o. S-5 Vipul Plaza, North Shivaji Nagar,	]	
Sangli Through her Power of Attorney Holder	]	
Fardin Abalal Attar	]	
Age-65 Years Occupation Agriculture	]	
R/o. 385-9, RadhaKrishna Extention near	]	
Gajanan Bakrey, Sangli, Tal. Miraj, Dist. Sangli.	]	**...Petitioner.**

Versus

1)	Shri. 1008, Parshwanath Digmaber Jain Mandir 351, Parshwanath Chawak Gaonbag, Sangli Pin. 416416. Through President Suresh Annasaheb Patil Age 65, Occ : Agri. R/o. Gaonbhag, Near Jain Mandir Sangli.	]
2)	Shri. Kumar alias Anna Bhujbali Uppadhye deceased through heirs-	]
2A)	Shri. Nagendrakumar Uppadhye Age 35, Occ: Agri.	]
2B)	Shri. Sanjaykumar Uppadhye Age 32, Occ:Agri.	]
2C)	Smt. Sumankumar Uppadhye Age 65, Occ:Housewife, *No.2 A to 2C R/o Kupwad, Tal. Miraj, Dist. Sangli*	]
2D)	Sau. Shobha alias Jayshree Appasaheb Sadalge, Age 46, Occ:Housewife R/o. Akkol Road Saishankar Nagar, Nipani, 591237 (Karnataka)	]
2E)	Shri. Vijayshree Manoj Ruge, Age 40, Occ: Housewife, R/o Samdoli, Tal. Miraj, Dist. Sangli.	]
2F)	Sau. Rajshree Sanjay Pachore, Age 46, Occ: Housewife R/o.Sangli Kupwad Road near Laxmi Nagar, Kupwad Tal. Miraj, Dist. Sangli	]

3)	Smt. Chandrabhai Bhra. Krushna Uppadhye Deceased to heirs	]]
3A)	Shri. Raghvendra alias Nagendra Krishna Uppadhye Deceased through heirs	]]]
3A1)	Smt. Padmavati Raghvendra Upadhye, Age 75, Occ: Housewife	]]
3A2)	Abhay Raghvendra Uppadhye Age 40, Occ: Service, *No.3A1) & 3A2) R/o 367, Gaonbhag, Near Jain Mandir, Sangli.*	]]]]
3A3)	Sau. Sujata Ajit Nitawe, Age 50, Occ: Housewife R/o. Shahunagar, Nandniroad, Jasingpur, Tal. Shirol, Dist. Kolhapur.	]]]]
3A4)	Sau. Ujawala Ajit Tare, Age 45, Occ: Housewife R/o. Near Badbade Hospital, Sangliroad, Ichalkaranji, Tal. Hatkangale, Dist Kolhapur.	]]]]]
3A5)	Sadhna Suresh Shambushete, Age 40, Occ: Housewife R/o. Nandni, Tal. Shirol,, Dist. Kolhapur.	]]]
4)	Shri. Ganpati Anna Upadhe deceased through	]]
4A)	Subhash Ganpati Upadhye age 70, Occ: Buisness, R/o. Near Jain Mandir Sangli.	]]]
5)	Anna Anant Uppadhye deceased through heir	]]
5A)	Dada Anna Uppadhye (no heirs)	]
6)	Shri. Balashaheb Appasaheb Patil Age Adult Occupation Nil, R/o Gaonbhag, Near Jain Mandir, Sangli.	]]]
7)	State of Maharashtra [Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908].	]]]]]
8)	District Collector, Sangli [Summons to be served on the Learned	]]

Government Pleader appearing for State]
of Maharashtra under Order XXVII, Rule 4,]
of the Code of Civil Procedure, 1908].] **...Respondents.**

WITH
WRIT PETITION NO. 8370 OF 2019

1) Smt. Hirabai Anna Patil,]
Age 85 years, Occ. Agriculturist,]
Residing at 58, North Shivaji Nagar,]
Taluka - Miraj, District - Sangli.]

2) Sou. Sunita Ramchandra Khavate,]
Age 55 years, Occ. Household,]
Residing at Parshwanath Niwas, Ankli,]
Sangli - Kolhapur Raod,]
Taluka - Miraj, District - Sangli.] **...Petitioners.**

Versus

1) Shri. Parshwanath Digambar Jain Mandir]
Trust Gaobagh, Sangli, Registration No.]
Sangli / A269, Registration date]
28.01.1953,]
Taluka - Miraj, District - Sangli]

2) Old Basti Gaobagh Sangli Trust]
Registration No. A196.]
(Its notice be served on below Opponent]
Nos. (3-1) and (3-2)]

3) Shri. Kumar @ Anna Bhujbai Upadhe]
(Since Deceased) through his LRS,]

3(1) Shri. Nagendera Kumar Upadhe,]
Age Adult, Occ. Agriculturist,]

3(2) Shri. Sanjay Kumar Upadhe,]
Age Adult, Occ. Agriculturist,]

3(3) Smt. Suman Kumar Upadhe,]
Age Adult, Occ. Agriculturist,]
Nos.3(1) to 3(3) are residing at Kuper,]
Taluka - Miraj, District - Sangli.]

3(4) Sou. Shobha @ Jayshree Appa Sadalage,]
Age Adult, Occ. Household,]
Residing at C/o. Shri Appa Paygonda]

	Sadalage, Akol Road, Sai Shankar Nagar, Nipani, Pin 591237 (Karnataka)	]]]
3(5)	Sou. Vijayshree Manoj Ruge, Age Adult, Occ. Household, C/o. Shri Manoj Nirbhiraj Ruge, Samdoli, Taluka - Miraj, District - Sangli.	]]]]
3(6)	Sou. Rajeshree Sanjay Pachore, Age Adult, Occ. Household, Residing at Sangli- Kuper Road, Parshwanath Nagar, South 2, Jain Mandir, Near Laxmi Nagar, Kupwad, Taluka - Miraj, District - Sangli.	]]]]]]
4)	Chandrabai Krishna Upadhe (Since Deceased) through her LRS,	]]
4(1)	Shri. Raghvendra Nagendrakrishna Upadhe, (Since Deceased) through his LRS	]]
4(1a)	Smt. Padmavati Raghvendra Upadhe, Age Adult, Occ. Household,	]]
4(1b)	Shri. Abhay Raghvendra Upadhe, Age Adult, Occ. Business, *Nos. 4(1a) and 4(1b) are residing at 367,* *Gaobagh, Near Jain Mandir, Gaobagh* *Parshwanath Chowk, Near Jain Mandir,* *District - Sangli.*	]]]]]]
4(1c)	Sou. Sujata Ajit Nitwe, Age Adult, Occ. Household, Residing at Shahunagar, Nandni Road, Jaysingpur, Taluka - Shirol, District - Kolhapur.	]]]]]
4(1d)	Sou. Ujwala Ajit Tare, Age Adult, Occ. Household, Residing at Near Badbade Hospital, Sangli Road, Ichalkaranji, Taluka - Hatkangale, District - Kolhapur.	]]]]]
4(1e)	Sou. Sadhana Suresh Shambhushate, Age Adult, Occ. Household, Residing at Nandani, Taluka – Shirol, District - Kolhapur.	]]]]
5)	Shri. Ganpati Anna Upadhe, (Since Deceased) through LRS	]]
5(1)	Shri. Subhash Ganpati Upadhe,	]

	Age Adult, Occ. Service, Residing at Gaobagh, Parshwanath Chowk, Near Jain Mandir, District - Sangli.	]]]	
6)	Shri. Anna Anand Upadhe, (Since Deceased) though LRS	]]	
6(1)	Shri. Dada Anna Upadhe, (Since Deceased) No LRS	]]	
7)	Shri. Balgonda Jingoda Patil, (Since Deceased) through LRS	]]	
7(1)	Shri. Anna Balgonda Patil, (Since Deceased) through LRS	]]	
7(1a)	Shri. Sudhir Anna Patil, (Since Deceased) through LRS	]]	
7(1aa)	Sou. Smita Sudhir Patil, Age Adult, Occ. Household,	]]	
7(1ab)	Kum. Amruta Sudhir Patil, Age Adult, Occ. Education	]]	
7(1ac)	Kum. Vrushab Sudhir Patil, Age Adult, Occ. Education, *Nos. 7(1aa) to 7 (1ac) residing at Yashwant* *Housing Society, Housing Society,* *Jaysingpur, Taluka - Shirol,* *District - Kolhapur.*	]]]]]]	
8)	Sou. Sangita Suresh Magdum, Age Major, Occ. Household, Residing at Sharada Nagar, Kupwad, Taluka - Miraj, District - Sangli.	]]]]]	**...Respondents**

Mr. R.C. Barge for the Petitioner.
Mr. Ashutosh M. Kulkarni, Mr. Avesh Ghadge and Mr. Akshay Kulkarni for the Respondent No. 1.
Mr. Hamid D. Mulla for the Respondent-State (Respondent Nos. 7 and 8).

Coram : Sharmila U. Deshmukh, J.

Date : November 29, 2024.

Judgment :

1. ***Rule***. By consent, Rule made returnable forthwith and taken up for final hearing.

2. Writ Petition No.10245 of 2027 questions the order dated 6th June 2017 passed by the State Government through the Hon'ble Minister for Revenue by which the revision filed by the Petitioner seeking deletion of the entry of *Devsthan Inam* land from the revenue records came to be dismissed for the reason that the Respondent-Trust had obtained a certificate of exemption as contemplated under Section 88B of the Maharashtra Tenancy and Agricultural Lands Act [for short ***"Tenancy Act"***].

3. Writ Petition No. 8370 of 2019 challenges the order dated 8th July 2019 passed by the Maharashtra Revenue Tribunal [for short ***"MRT"***] in Revision Application No. 84 of 2018 rejecting the revision which had assailed the grant of exemption certificate.

4. Both parties agree that fate of Writ Petition No.8370 of 2019 will determine the fate of Writ Petition No.10245 of 2017. The petitions are taken up for hearing and are being disposed of by this common judgment.

5. Facts of Writ Petition No.8370 of 2019 are that the suit properties are Survey Nos. 503/1, 503/2, 503/3, 503/4 and 493 situated at Sangli, which are claimed to be under the Petitioner's cultivation and possession personally on the tiller's day, i.e., 1st April 1957 and thus the

Petitioner is deemed to be owner of the property under the provisions of Tenancy Act. In the year 1999, there was a dispute between two Trusts and Regular Civil Suit No.2 of 1999 came to be filed by one of the Trust's against the other Trust to which the Petitioner was a party. The reliefs sought in the said suit included relief of recovery of possession of immovable property, declaration of right of the Plaintiff-Trust and for de-registration of other Trust. The suit came to be decreed and it was declared that the Respondent No.1-Trust is the rightful Trust as compared to other Trust, i.e., Shri Parshwanath Digambar Jain Mandir Trust (Jain Vasti) for the management of Shri Parshwanath Digambar Jain Mandir (Jain Vasti), Sangli and the other Trust came to be de-registered.

6. An application came to be filed seeking exemption certificate under Section 88B of Tenancy Act by the Respondent No.1 which was allowed by the SDO by order dated 15th October 2018 which was challenged by way of revision before the MRT and by order dated 8th July 2019, the Revision Application came to be dismissed leading to the present petition.

7. Heard Mr. Barge, learned counsel appearing for the Petitioner and Mr. Kulkarni, learned counsel appearing for the Respondent No.1.

8. Mr. Barge has taken this Court through the findings of the SDO and MRT. He would submit that under Section 88B of the Tenancy Act, before a certificate can be granted, the Trust has to satisfy two conditions, first is that the Trust is registered under the Maharashtra Public Trusts Act and that the entire income of such Trust is appropriated for the purpose of such Trust. He submits that absence of either of the conditions would vitiate the entire proceedings and no certificate under Section 88B of the Tenancy Act can be granted. He submits that as far as registration of Trust is concerned, there is no dispute, however, second condition contained in sub-clause (ii) of Sub-Section (1) of Section 88B of the Tenancy Act has not been satisfied. He submits that the statement of accounts tendered by the Respondent No.1-Trust was of the year 2015 and referred to the income which was received from other lands. He submits that there is no income from the properties in respect of which the exemption certificate was sought and therefore second condition of the entire income from the said land being appropriated for the purposes of Trust is not satisfied. He points out that in the Revision Application filed before the MRT, the Revision Applicant, i.e., the Petitioner herein has pleaded that the possession of the said land is with the Revision Applicant and hence there is no question of utilisation of any income from the said land for the purposes of Trust. In support of his submissions, he relies upon following decisions :

***Bhimrao Chandru Patil v. Balkrishna Dattatraya Joshi*[1] ;**

***Laximbai S. Patil v. Badashah Sultan Mutwali*[2] ;** and

***Yadu Dagadu Amrale v. Shriram Samarth Wasudev*[3]**

9. *Per contra* Mr. Kulkarni, learned counsel appearing for the Respondent No.1-Trust would submit that it is the Petitioner's own case that he is in possession of the land and that being so, there is no question of any income being generated from that land and, therefore, no consideration was given to the appropriation of any such income. He submits that the plain reading of Section 88B of the Tenancy Act would not indicate that if there is no income from the property in respect of which the exemption certificate is sought, the exemption certificate cannot be granted.

10. Considered the submissions and perused the records.

11. Before proceeding further with the facts of the case, it would be appropriate to refer to the relevant provisions of Section 88B of the Tenancy Act. Clause (b) of Sub-Section (1) of Section 88B along with the proviso to that sub section 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)……….*
>
> *(b) to lands which are property of a trust for an*

1 2002(1) Mh.L.J. 125.

2 1995 Supp (3) SCC 102.

3 2005(3) All M.R. 225.

educational purpose, 4 [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;

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."*

12. For the Trust to be entitled to be exempted from the provisions mentioned therein, the proviso provides that the Trust should be firstly registered and secondly the entire income of such land should be appropriated for the purposes of Trust.

13. In the present case, there is no dispute that the first condition is satisfied and the debate is about non fulfillment of second condition as the statement of accounts of the Trust does not indicate that there is any income from such land.

14. Upon reading of Section 88B of the Tenancy Act, more particularly sub-clause (ii) of proviso to Sub-Section (1) of Section 88B, the same provides that the entire income of such land is required to be appropriated for the purposes of such Trust.

15. It is the petitioner's own case that there is no income from the said land as the land is in possession of the Petitioner and there is no material on record to show that any income was generated from such land which could be appropriated by the Trust. As there was no income from such land, on the Petitioner's own showing the statement of accounts of the Trust produced by the Trust does not reflect any income from the subject land. I am unable to subscribe to the reading of the said provision as sought to be done by learned counsel appearing for the Petitioner that if there is no income from such land, then, the certificate under Section 88B of the Tenancy Act cannot be granted. Though the proviso uses the word "and" the applicability will depend on the generation of income from the land.

16. It cannot be said that if such land does not generate any income then no application under Section 88B of the Tenancy Act can be filed. The issue is covered by the decision of this Court in ***Dattatraya Sakharam Yeole v. Hafeez Munoroddin Haji***[4] where this Court has held that the obligation cast under Section 88(1)(b)(ii) of the Tenancy Act cannot mean that if no income is derived from the Trust from suit lands, Section 88B of the Tenancy Act will not be available.

17. In the case of ***Bhimrao Chandru Patil v. Balkrishna Dattatraya Joshi*** (supra) relied upon by learned counsel for the Petitioner, the issue for consideration was whether it is necessary to hear the tenant on the question as to whether the Trust satisfies the conditions of eligibility to claim exemption certificate. It is in that context that the parameters of enquiry under Section 88B of the Tenancy Act were set

4 2004 SCC OnLine Bom 559.

out and the enquiry into two sub-clauses of the proviso was considered mandatory. There is no quarrel with the said proposition. However, the same does not assist the case of the Petitioner.

18. The next decision is in the case of ***Laximbai S. Patil v. Badashah Sultan Mutwali*** (supra) where the Apex Court has held that if the object of provision is to save the income of lands of the Trust for appropriating for the purpose of Trust, it is not necessary that the Trust should establish that the entire income derived by it from lands other than the land in respect of which the exemption certificate is sought, was being appropriated for the Trust. The said decision lays down the proposition of law that what is required to be demonstrated under sub-clause (ii) of proviso to Sub-Section (1) of Section 88B of the Tenancy Act is that the income from the land in respect of which the exemption certificate has been sought is required to be appropriated for the purposes of Trust and not the income from other lands. Even this decision does not lay down an absolute proposition of law that if there is no income from the property, Section 88B cannot be applied.

19. The third decision in the case of ***Yadu Dagadu Amrale v. Shriram Samarth Wasudev*** (supra) was rendered in the context of enquiry conducted by the Assistant Collector while deciding an application under Section 88B of the Tenancy Act in which the status of Petitioner as a tenant and the provision of Section 70(b) of the Tenancy Act were taken into consideration. The said decision is clearly distinguishable on facts.

20. In the light of above, considering that as far as the Trust is concerned, it is not disputed that the same has been validly registered and the undisputed fact being that there is no income from the land in respect of which the exemption certificate under Section 88B of the Tenancy Act has been sought, as it is the Petitioner's own showing that he was in possession of the land on tiller's date and there is no income from the said land, there is no question of inquiring whether the income from the said land is being appropriated for the purposes of Trust. The revisional authority exercising powers under Section 76 of the MRT Act, has confined itself to the parameters set out therein. There is no infirmity in the impugned orders. Resultantly, Writ Petition No. 8370 of 2019 stands dismissed. In view of the dismissal of Writ Petition No. 8370 of 2019, Writ Petition No. 10245 of 2017 does not survive for consideration and stands dismissed. Rule is discharged.

21. In view of the disposal of Writ Petitions, nothing survives for consideration in the pending civil/interim applications and the same stand disposed of.

[Sharmila U. Deshmukh, J.]