(2006) 07 BOM CK 0049

In the Bombay High Court

Case No : Writ Petition No. 551 of 1994

Anand Abhyankar and Others APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 25-07-2006

Acts Referred:

- Constitution of India, 1950 — Article 226
- Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 47, 47(1), 47(2), 472
- Maharashtra Agricultural Lands (Ceiling on Holdings) Rules, 1962 — Rule 16

Citation : (2007) 2 BomCR 860 : (2006) 6 MhLj 285

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : S.A. Gordey, for the Appellant; A.D. Sonak, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By way of present Writ Petition filed u/s 226 of the Constitution of India, the petitioners have challenged the order dated 15-5-1993/24-5-1993 passed by the respondent, rejecting the application of the petitioners for grant of exemption of their lands on the ground that the said lands are being used for cattle breeding and hence stands exempted in view of provisions of Section 472(b) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. This Court has, while admitting the matter, on 18-3-1994 granted interim stay, thereby the possession of the petitioners over the lands, for which the said exemption has been claimed, is protected.

2. Heard Mr. S.A. Gordey, Advocate for the petitioners and Mr. A.D. Sonak A.G.P. for the respondent.

3. Advocate Gordey points out that survey Nos. 294 and 296 admeasuring 7.40 hectare belonging to Smt. Sarojini Abhyankar and survey No. 266, 267 and 268 admeasuring 8.50 hectare belonging to Smt. Yogini Abhyankar, forms the subject-

matter of the proceedings initiated before the Collector Wardha for grant of exemption u/s 47(2)(b) the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The petitioners before this Court are legal heirs of these two owners. The exemption was sought on the ground that the said lands are being used for cattle breeding. The necessary information, as is required, was also submitted therein. It is appears that on 28-11-1985 the said application was rejected by the respondent and that rejection was challenged by filing Writ Petition No. 657/1986 before this Court. That Writ Petition was disposed of on 6-11-1987 by this Court and the matter was remanded back to the respondent with directions to give opportunity of hearing to the petitioners and to make enquiry in the matter. The respondent, thereafter, has conducted enquiry and after hearing the petitioners, has passed impugned order on 15-5-1993/24-5-1993. The respondent has held that the prayer for exemption, on the ground that the petitioners are using their lands for cattle breeding, cannot be granted and is not maintainable u/s 47(2)(b) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

4. Mr. Gordey has invited attention to the impugned order, to point out that the application of mind, as is apparent therein, is not correct because according to him entry for exemption is given under sub Clause (b) of Section 47(2) and it will have to be interpreted independently and it cannot derive any colour from Section 47(2)(bb). He further argues that this Court has, while remanding the matter. found that the activity of stud farm also covers activity of cattle breeding. According to him, therefore, the impugned order, which overlooks the norms of interpretation, is liable to be quashed and set aside and application of exemption, which otherwise fulfils all the criteria for grant of exemption under the rules must be allowed. He invited attention of the Court to Section 47 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, in order to substantiate his contention, in this respect.

5. Mr. Sonak, learned A. G. P for the State has contended that the provision of Section 47(2)(b) and (bb) are very clear and there is no scope for creating any confusion. According to him, the Authority has rightly applied its mind and has found that the individuals, like the petitioners, are not entitled to claim any exemption in activity of cattle breeding. According to him, the conclusion arrived at by the said Authority that stud farm will not include cattle breeding, calls for no interference.

6. Perusal of earlier order passed by this Court dated 6-11-1987 in Writ Petition 657/1986 reveals that this Court has not finally concluded the issue and only found that the activity of stud farm may also be covered under it because only its Dictionary meaning was considered by this Court and found that Rule 16(a) of Maharashtra Agricultural Lands (Ceiling on Holdings) Rules, requires an application to be made by all the members mentioned therein and also postulates that before any decision is taken, the Government should held an enquiry. This Court has found that if any report is made by Collector, through

whom the application for exemption was forwarded by the petitioner, the contents of such report should be disclosed to the applicants and, thereafter only, the Government can reach a particular decision. It has been found that if there is no such compliance, the decision will not be a decision under Rule 16 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Rules. The Court has relied upon earlier judgment in Gulam Rasool Haji Yakub v. State of Maharashtra 1978 Mh.L.J. 144 for this purpose. It has been found that the said ruling applies to the situation, where application under Clause 47(b) is made and an order, which ultimately results in depriving the petitioners of their lands, suffers from some the vice of non-observance of Rule 16(a) of the Act and, therefore, respondent was directed to give opportunity of hearing to the petitioners. The said order, however, nowhere concluded that the activity of stud farm will also include activity of cattle breeding.

7. The perusal of Section 47 of The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, on which reliance has been placed, reveals that the said section has been substituted for original Section 47 by Maharashtra Act No. 21 of 1975. We are not concerned with the scheme of old Section 47 because the new section has come into force from 1975 and the prayer for exemption, as made by the petitioners, is on 26-2-1981. The petitioners had prayed for exemption under Sub-sections (2)(b) of Section 47 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, which has come into force on substituting Maharashtra Act 21 of 1975.

8. The perusal of Section 47(2) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 reveals that the lands, which are eligible for exemption as per provisions of said sub-section, are mentioned in Clauses (b), (bb) and (c) thereof. Certain lands are exempted u/s 47(1) and the exemption given to those lands u/s 47(1) is in sense mandatory. The lands are like the lands held by Government, lands belonging to local Authority as well as belonging to Corporation, Regimental Farms, Land Development Banks etc. However, Sub-section (2) makes it clear that the lands covered under that sub-section are subject to the rules made by the State Government and. therefore, it is clear that the question; whether lands are entitled to exemption or not, is required to be adjudicated upon by the Government. Sub-sections (b) and (bb), with which we are concerned in the present matter, reads as under

Section 47. Exempted lands:

(1)...

(2)...

(2)(a)...

(b) Land held before 26th day of September, 1970 by any person for stud farm or by any public trust or wakf for panjarapole or gaushala;

(bb) land held before the 26th day of September, 1970 by a public limited company, a public trust or a wakf for the purpose of breeding of cattle or sheep:

The perusal of section (b) reveals that it exempts lands even held by the person for stud farm or by any public Trust or wakf of for Panjarapole or Gaushala. It is. therefore, clear that the lands held by any person for Panjarapole or Gaushala is not exempted. The word "person" used therein will cover even artificial persons.

In this background, perusal of Sub-clause (bb) shows that word "person" is not used therein and the Legislature has mentioned only "public limited company, a public trust or a wakf". The words public limited company or Wakf appear in Clause (bb). Thus by not mentioning the word "person" in Clause (bb), the Legislature has made it clear that only lands held by public limited company a public trust or wakf, for the purpose of breeding of cattle or sheep, are entitled to claim exemption u/s 47(2). The petitioners are individuals and, therefore, naturally their case is not covered u/s 47(2)(bb) and the petitioners'' by moving application u/s 47(2)(b) have indirectly accepted this.

9. The plain reading of Clauses (b) and (bb) shows the use of words like stud farm, panjarapole or gaushala, breeding of cattle or sheep. If the arguments of the petitioners are accepted and activity of cattle breeding is read into the words "stud farm", under Clause (b) of Sub-section (2) of Section 47 of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961, the legislative intent of not giving exemption to an individual, if he is using the land for breeding of cattle or sheep, is defeated. It is apparent that otherwise Legislature would have used the word "person" in Clause (bb). By not using that word in Clause (bb) the Legislature has denied the exemption to the lands held by individuals for the purpose of breeding of cattle or sheep. Thus, the intention, which is obvious, cannot be defeated by interpreting the word "stud farm" used in Clause (b) to include activity of breeding of cattle or sheep. This Court has, in its earlier judgment dated 6-11-1987, only mentioned the Dictionary meaning of the word "stud farm" in the context, in which the words are used in Clause (b) or (bb), above. It is apparent that the Legislature has not intended to use the Dictionary meaning of "stud farm" in Section 47(2)(b) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

10. Thus, in view of this, it is apparent that the petitioners are not entitled to claim exemption under Sub-section 47(2)(b) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. Application of mind by the respondent, in this respect is, therefore, correct. No case is made out for interference by the petitioner. The Writ Petition is, therefore, dismissed with no orders as to costs.