
(1978) 11 BOM CK 0001
In the Bombay High Court
Case No : A.F.O.D. No. 487 of 1970

Chhatrapati Charitable Devasthan Trust	APPELLANT
Vs	
Parisa Appa Bhoska and Others	RESPONDENT

Date of Decision : 23-11-1978

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 17, 18, 19, 20, 21
Bombay Public Trusts Rules, 1951 — Rule 8
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32R, 88

Citation : AIR 1979 Bom 218 : (1980) 82 BOMLR 243 : (1979) MhLj 163

Hon'ble Judges : Rege, J; Dharmadhikari, J

Bench : Division Bench

Advocate : G.B. Rege and R.G. Samant and Co, for the Appellant; K.J. Abhyankar, for the Respondent

Final Decision : Dismissed

Judgement

Dharmadhikari, J.—The appellant, Public Trust filed a suit for possession of certain agricultural lands situate at Uchagaon in taluka Karvir of Kolhapur district against the defendants on the ground of trespass by the defendants in the suit lands or in the alternative on the ground that they are tenants whose tenancy was duly terminated.

2. The suit lands i. e. Survey Nos. 140 and 141 initially (belonged to Chhatrapati of Kolhapur who created a trust called "Shri Chhatrapati Charitable Devasthan Trust" and the suit lands were donated to the said trust The said trust was created on 18th of Jan. 1956 and thereafter it was registered under the Bombay Public Trusts Act, 1950. The trust obtained a certificate u/s 88-B (2) of the Bombay Tenancy and Agricultural Lands Act, 1948. It is not necessary to make a reference to the other averments made in plaint because ultimately it appears from the judgment of the trial Court that the case of trespass was given up by the plaintiff and the suit proceeded on the basis that the predecessor of defendant No. 4, Anant Mudhale was the only tenant of the suit lands and his

tenancy was duly terminated. It appears from the record that Ms tenancy was terminated by a notice dated 23rd September 1967 with effect from the end of March 1968,

3. Defendant No, 4, who was the real contesting defendant filed his written statement and contested the suit. He denied the fact that the Trust had obtained any certificate u/s 88B (2) of the Tenancy Act and according to him even if such a certificate was obtained by the trust, it was not binding on him as he was not a party to the said proceedings. Original defendant No. 4 died during the pendency of the suit and his heirs were brought on record. They have filed their written statement vide Exhibit 45. It was contended on behalf of the heirs of defendant No. 4 that on 1st April 1957 they and their predecessor Anant became owners of the suit lands in view of the provisions of Section 32 of the Tenancy Act. They further contended that thereafter the suit lands did not belong to the Trust at all and hence the notice of termination of tenancy is of no consequence or effect. On these grounds, according to the defendants the suit itself was not maintainable,

4. In view of these pleas raised by the parties the learned Judge of the trial Court framed necessary issues. It appears that before the trial Court it was an admitted position that the Trust was registered under the Bombay Public Trusts Act, 1950 on 31st of May 1959. The learned Judge further found that in view of the provisions of the Bombay Tenancy Act on 1st April 1957 i.e, the tillers' day the tenants became owners of the suit lands u/s 32 of the Tenancy Act. Therefore, relying upon the Division Bench decision of this court in Laxminarayan Temple, Kothure Vs. Laxman Mahadu Chandore by his legal representatives and Others, the learned Judge held that the suit is not maintainable because defendant No. 4 had already become owner of the suit lands on 1st April 1957 itself. As a result of this finding the learned Judge of the trial Court dismissed the suit filed by the plaintiff. It is this judgment and decree which are challenged in the present first appeal.

5. Mr. Rege, learned Counsel appearing for the appellant plaintiff contended before us that the learned Judge of the trial Court has committed an error in holding that the present suit is covered by the earlier Division Bench decision of this Court in L. N. Temple v. Laxman. According to Mr. Rege in the present case the Trust was created on 18th of January 1956. The suit property was donated in the name of trust on 13th July 1956, On 24th September 1956 the Trust was duly settled. On 18th January 1956 itself an application for registration of the Trust under the Bombay Public Trusts Act, 1950 was filed before the competent authority. Ultimate order in that behalf was passed by the authorities concerned on 31st of May 1959 and thereafter sometime in July 1960 an application u/s 88-B (2) of the Tenancy Act was filed. According to Mr. Rege in view of the provisions of the Bombay Public Trusts Act, 1950 and particularly Section 18 thereof, the Trust should be deemed to have been registered on the date of the application itself i.e. 18th Jan. 1956. If this is so, then the law laid down by this Court in L. N. Temple v. Laxman is obviously not applicable to the facts and

circumstances of this case because till 18th Jan. 1956, original defendant No. 4 had not become owner of the suit lands u/s 32 of the Tenancy Act. It is not possible for us to accept this contention. Section 18 of the Bombay Public Trusts Act, 1950 contemplates filing of an application for registration of the Trust. Merely because an application is filed In that behalf, it does not follow that the trust is automatically registered. After such an application is filed, an inquiry for registration is to be held as per the procedure prescribed by Section 19 and the rules framed thereunder. On completion of the inquiry u/s 20 of the Act the Deputy or the Assistant Charity Commr. has to record his findings with the reasons therefore as to the matters mentioned in Section 19, At the same tune the said authority is required to make an order for payment of registration fees. After the said registration fee is paid and the order in that behalf is passed the Deputy or the Assistant Charity Commissioner has to make entries in the register kept u/s 17 in accordance with the findings recorded by him u/s 20 of the Act, or if an appeal or an application is made as provided by the Bombay Public Trusts Act then in accordance with the final decision of the competent authority provided by the Act. Therefore, from the bare reading of the provisions of Sections 18, 19, 20 and 21 of the Bombay Public Trusts Act, 1950 It is quite clear that unless an order is passed u/s 20 of the Bombay Public Trusts Act, 1950 a Trust cannot be said to have been duly registered, This position is further made clear by tha rules framed under the Act. Rule 8 of the Bombay Public Trusts Rules, 1951 deals with the certificate of registration. According to this rule when a public trust, is enrolled in the register of public trusts, a certificate in the form referred to in the rule has to be issued to tha trustees in token of registration. Such a certificate is to be signed by the Assistant or the Deputy Charity Commissioner in charge of the Public Trusts registration and shall bear his official seal. From the form of the certificate it is further clear that the competent authority has to certify that the public trust described in the certificate "has this day been duly registered under the Bombay Public Trusts Act, 1950." Therefore Section 18 of the Act cannot be read in isolation and has to be considered along with the scheme of the other provisions of the Act vs. Sections 17 to 21. If these provisions are read together, the trust cannot be said to be registered merely when an application u/s 18 is filed. On the contrary registration is effected only after the order is passed by the competent authority u/s 20 and the entry is taken In the register. From the documents produced on record, that is an extract from the entries of the public trust register It appears that so far as the present trust is concerned, It was registered on 31st of May 1959 i. e. after the tillers" day. In this view of the matter, in our our opinion, the law laid down by this Court in Laxminarayan Temple, Kothure Vs. Laxman Mahadu Chandore by his legal representatives and Others, is wholly applicable to the facts and circumstances of the present case. The Division Bench while construing the provisions of the Bombay Public Trusts Act, 1950 as well as Section 88-B of the Tenancy Act, in the said decision observed as under (at paragraphs 25, 26 of AIR):--

"Clause (b) grants exemption to the properties of certain types of trusts and the

proviso lays down two conditions for the acquisition of the exemption the conditions being firstly that the trust must be or must be deemed to be registered under the Bombay Public Trusts Act and secondly, that the entire Income of the property is appropriated for the purposes of the trust. A trust is not entitled to the exemption till It fulfills the two requirements mentioned in the proviso. It must follow that the trust in the present case was not entitled to exemption u/s 88-B till 28th March 1958 when it was registered under the Bombay Public Trusts Act. Before that date however, respondent No. 1 had already become the owner of the land by virtue of the provisions contained in Sections 32 to 32R of the Act, The petitioners cannot get exemption in respect of a land which had ceased to be the property of the trust on the date on which the trust became entitled to claim that exemption.

We are, however, unable to accept the view of the Maharashtra Revenue Tribunal that the trust ought to have been a registered trust on 1st August 1956 on which date Section 88-B came into force, In order that the land may be entitled to exemption under that Section. There is nothing In the terms of clause (b) of Section 88-B (1) which requires its operation to be confined to the properties of those trusts which were already In existence when Section 88-B came into force. The exemption granted by Section 88-B is not confined to the operation of Sections 32 to 32R of the Act, but extends to the operation of several other provisions of the Act, A trust may be created after Section 88-B came into effect and still the lands of the trust would be entitled to the exemption given by that Section. A trust, however, cannot claim an exemption under that Section in respect of lands which had already become the property of the tenants before the right of exemption was acquired by the trust. That is why the trust in the present case having become entitled to claim exemption u/s 88-B for the first time on 28th March 1958 cannot get exemption in respect of a land which had gone into the ownership of respondent No. 1 on 1st April, 1957."

6. It is also not possible for us to accept the contention of Mr. Rege that though in fact an order u/s 20 of the Bombay Public Trusts Act is passed by the competent authority on 31-5-1959, in law the trust should be treated as deemed to have been registered on the date of application or on the date when the particulars u/s 18 were furnished by the trust. In this case we are not concerned with the doctrine of "relation back" qua the provisions of Bombay Public Trusts Act, but we will have to consider this part of the argument, in view of the rights and liabilities created by the Bombay Tenancy and Agricultural Lands Act and particularly Section 88-B thereof. The Bombay Tenancy and Agricultural Lands Act was amended by Bombay Act XIII of 1956. The amending Act added Sections 32 to 32R to the parent Act, with the object of transferring the ownership of agricultural lands from landlords to tenants, i.e. to the tillers of the land. Subject to certain exceptions, with which we are not concerned in this case, tenants became owners of the lands from the tillers" day i. e. 1-4- 1957. By the same amending Act Section 88-B was also added to the parent Act, along with proviso.

7. By the proviso two conditions have been laid down for a trust to get exemption. One of them is that the trust must be a registered trust under the Bombay Public Trusts Act. Therefore a landlord is not entitled to file an application u/s 88-B unless such a trust is duly registered. Till then the application itself is not maintainable. In this particular case an occasion to file application under Sections 88-B arose after 1-4-1959. It is not disputed by Mr. Rege that even though an application for registration was filed in 1956, till 1-4-1959 the trust was not entitled to file such an application for exemption u/s 88-B of Tenancy Act. The tenant became owner of the land on 1-4-1957 i. e. tillers" day. If this is so, then on the basis of alleged doctrine of "relation back" he cannot be divested of his right of ownership. Section 88-B is in the nature of exception or exemption. Therefore, it will have to be strictly construed. The object of the Act is to confer the ownership rights on the tiller of the land. He becomes owner of the land on 1-4-1957. Therefore the order of registration passed on 1-4-1959 and that too in the proceedings under Bombay Public Trusts Act, to which tenant was not a party, cannot have an effect of extinguishing his acquired or vested right. The order passed on 1-4-1959 registering the trust cannot have effect of reviving an extinguished or lost claim so far as the trust is concerned.

8. As already observed, as the trust in the present case was registered on 31st of May 1959, it cannot claim an exemption u/s 88B of the Tenancy Act in respect of the suit lands, which had already become the property of defendant No. 4 before the right of exemption was acquired by the trust.

9. In this view of the matter In our opinion, the learned Judge of the trial Court was right in dismissing the suit of the plaintiff as the suit was not maintainable.

10. In the result, therefore, the ap peal fails and is dismissed. However, in the circumstances of the case there will be no order as to costs.

11. Appeal dismissed,