(2000) 07 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 5307 of 1987

Dr. Rustom B.M. Colah and Others — APPELLANT

Vs

Tahsildar Palghar and Others — RESPONDENT

Date of Decision : 18-07-2000

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2000) 4 ALLMR 778 : (2000) 102 BOMLR 491 : (2001) 1 MhLj 287

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.M. Khanwilkar, J.—This Writ Petition under Article 226 & 227 of the Constitution of India is directed against the orders passed by the Officer on Special Duty (Appeals & Revisions), Revenue and Forest Department, Government of Maharashtra, Bombay dated 5.7.1986.

2. Briefly stated, the Petitioners are trustees of a public charitable institution registered with the Charity Commissioner under the provisions of Bombay Public Trusts Act bearing Registration No. C-157. The trust had started Masina Hospital in the year 1902 administered by Dr. H.M. Masina, FRCS. The Masina Hospital is a cosmopolitan charitable hospital catering to the medical requirements of all communities and sections of the Society-The hospital has about 300 beds and employs about 400 workers. That one Mr. Jamshedji Hormusji Eranee (Francis) donated grass growing lands bearing No. 488, 810, 811, 812, 813, 814, and 815 situated at Village Fokman, Tail. Palghar, Dist. Thane having an area of about 90 acres. The said lands were donated to the public trust.

3. The petitioners applied to the Sub-Divisional Officer, Dahanu Division, Dahanu for exemption u/s 47(2)(a) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 on the ground that the said lands were held by the public charitable trust and the income derived from the said lands was being utilised for

the medical relief of the patients admitted in the hospital of the trust. It was the case of the petitioners that the petitioners had complied with all other requirements entitling the exemption of the said lands within the meaning of the Section 47 of the Act. The Officer on Special Duty (Appeals & Revisions) who decided the said application has in terms held that the trust apparently fulfils all the requirements of provisions of Section 47(2)(a) of the Act and is eligible for exemption. The only reason which weighed with the authority was that the trust was not geared up to provide the necessary infrastructure in enhancing the income from the lands in question so as to support the medical relief required to be provided by the trust through the hospital run by the trust. The Officer on Special Duty (Appeals & Revisions) accordingly rejected the exemption application, but still strongly recommended that the trust should provide the necessary infrastructure to make excellent commercial proposition which was bound to benefit the trust.

4. The petitioners have taken exception to the aforesaid decision by which application for exemption u/s 47 has been rejected. The learned Counsel for the petitioner submits that the authority having concluded that the trust had fulfilled all the requirements of the provisions of Section 47(2)(a) of the Act for being eligible for exemption, there was no valid reason for rejecting the application that can be said to be permissible in law. The respondents though served, none appears at the time of hearing.

5. Before deciding the merits of the contention, it would be appropriate to refer to the relevant provisions of the Act, which reads:

47. (1) The following lands shall be exempted from the provisions of this Act, that is to say,-

(2) Subject to any rules made in this behalf, the State Government may, after such inquiry as it deems fit, by an order in the Official Gazette, exempt from the provisions of this Act, any of the following lands on such terms and conditions including the extent of area to be exempted as may be specified in the order, namely:-

(a) land held before the 26th day of September 1970 by a public trust or a wakf the major portion of the income of such land being appropriated for the purpose of education or medical relief or both or where the major portion of the income is not so appropriated but an undertaking in the prescribed form is given within six months of the commencement date (or within such further period as the State Government may allow in that behalf) to the Collector, that the major portion of the income of such land will, within a period of two years from the date of publication of the order granting exemption be appropriated for those purposes.

6. On plain reading of the provisions, the reason indicated by the Officer on Special Duty cannot be said to be permissible or relevant for deciding the application for exemption. The ground that the petitioner trust did not have proper infrastructure to effectively manage the agricultural lands to derive

maximum gain cannot be a ground to reject the application u/s 47 of the Act. Since the petitioners fulfilled all other requirements of provisions of Section 47(2)(a), there was no valid reason to reject the application, in the manner it has been done by the authorities in the case. In my view, the reason indicated by the authority for rejecting the application is totally extraneous and cannot be sustained in law. In the circumstances, the Writ Petition succeeds on this limited ground and the order passed by the Officer on Special Duty dated 5.7.1986 is set aside. The application is remitted back to the authorities to consider the same afresh in accordance with law.

7. Since no other reasons has been indicated in the impugned order of the Officer on Special Duty, the application will have to be processed in accordance with the observations in this judgment.

8. For the aforesaid reasons, the Writ Petition is allowed with costs. Rule is made absolute. Parties to act on the copy duly authenticated by the Sheristedar of this Court.

C.C. expedited.