(2009) 04 BOM CK 0116

In the Bombay High Court

Case No : Letters Patent Appeal No. 152 of 2008

Goaldas Deosthan APPELLANT

Vs

State of Maharashtra and Another RESPONDENT

Date of Decision : 22-04-2009

Acts Referred:

Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 — Section 42(2), 47(2)

Citation : (2009) 4 BomCR 680

Hon'ble Judges : Reis F.M., J;Bobde S.A., J

Bench : Division Bench

Advocate : S.V. Sohoni, for the Appellant; Sonak, A.G.P., for the Respondent

Judgement

1. Heard Mr. S.V. Sohoni, learned Counsel for the appellant and Mr. Sonak, learned A.G.P. for respondents.

2. Admit.

3. Taken up for final hearing by consent.

4. This appeal has been filed by the appellant Trust against the order of the learned Single Judge upholding the rejection of the appellant''s exemption u/s 42(2)(a) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961. The learned Single Judge rejected both the contentions of the petitioner.

5. The petitioner contended before the learned Single Judge that the application for exemption was wrongly rejected because no opportunity of hearing was given to the appellant/petitioner. The learned Single Judge has found that the Secretary has considered the entire material supported by the Trust and there is, therefore, no merit in the contention.

6. The second contention of the appellant/petitioner was that the application for exemption has been wrongly rejected u/s 47(2)(a) of the Act on the ground that the petitioner has now spent a major portion of income of land for the purpose of education or medical relief whereas the law requires the applicant to have either

spent a major portion for the aforesaid purpose or give an undertaking that he will do so within two years of the exemption. Section 47(2)(a) reads as follows:

8.47(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:

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;

7. This contention of the petitioner/appellant has been rejected by the learned Single Judge on the ground that the Secretary has rightly observed that even after the undertaking, in no financial year the Trust spent more than Rs. 200/- for medical relief or education.

8. Having regard to the provisions of Section 47(2)(a), it appears that the appellant/petitioner''s application for exemption ought to have been considered and in any case not rejected on the ground that after the undertaking, in no financial year, the Trust spent more than Rs. 200/- for medical relief or education. The requirement of Section 47(2)(a) is that there should be an undertaking that the applicant should give an undertaking that the major portion of the income will be appropriated for the purpose of education or medical relief "within a period of two years from the date of publication of the order granting exemption". Thus, it is clear that the application for exemption could not have been rejected because the major portion of income has not been spent.

9. We are of the view that the application for exemption cannot be rejected if there is an undertaking to the effect that a major portion of the income will be spent for the aforesaid purposes within two years from the date of exemption. This presupposes that an exemption can be granted on the basis of an undertaking that the amount will be spent within a period of two years. This aspect seems to have been overlooked. In this view of the matter, the judgment in appeal is hereby set aside. The matter is remanded back to the learned Single Judge for fresh consideration in accordance with the law.

10. The Letters Patent Appeal stands disposed of in above terms with no order as to costs.

