(1979) 03 BOM CK 0014

In the Bombay High Court

Case No : Spl. Civil Application No. 256 of 1975

Jagdeorao Anandrao Pawar APPELLANT

Vs

Kisan Namdeo Pawar and Another RESPONDENT

Date of Decision : 22-03-1979

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 3, 4
Bombay Tenancy and Agricultural Lands Rules, 1956 — Rule 52
Land Acquisition Act, 1894 — Section 6(3)

Citation : AIR 1980 Bom 148 : (1980) 82 BOMLR 137 : (1979) MhLj 687

Hon'ble Judges : Masodkar, J

Bench : Single Bench

Advocate : B.P. Apte, for the Appellant; M.V. Sali, for the Respondent

Judgement

1. The present petition questions the order made by the Maharashtra Revenue Tribunal u/s 76, exercising powers of revision, against the certificate Issued by the District Deputy Collector u/s 88-B (2) of the Bombay Tenancy and Agricultural Lands Act, 1948. That exemption certificate was granted on December 26, 1959 whereby it was certified that the present petitioner trust is an institution for public religious worship and as such is registered under the Bombay Public Trusts Act, 1950 and the entire income of the lands mentioned in the schedule appended is appropriated for the purposes of the trust and thus the conditions to the proviso to Sub-section (1) of Section 88-B are satisfied by the trust. Respondent No. 1 Kisan is concerned with survey Nos. 77, 78 and 83, while respondent No. 2 Shripati is concerned with survey No. 231 of Village Supe, which four survey numbers are included along with other survey numbers in the schedule. The Maharashtra Revenue Tribunal, before whom the question of jurisdiction was raised, allowed the revision mainly on the ground that the Inquiry was held against the back of the applicants and they had no notice of that inquiry and, therefore, the matter was remitted back to the Collector for fresh inquiry.

2. The first and the foremost question Is whether Section 76 of the Bombay Tenancy and Agricultural Lands Act, 1948 was available to the Tribunal so as to exercise the revisional jurisdiction in the matter of grant of certificate u/s 88-B (2) of the Act.

3. As far as the statutory character and the scheme of the provisions of Section 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948 are concerned, there is the Division Bench authority of this Court in the case of Manekji Edulji Mistry v. Maneksha Ardeshir Irani, (1973) 75 Bom LR 609 , where the Court observed that the lands belonging to a trust falling under Sub-section (1) (b) of Section 88-B would be exempt from the operation of some of the provisions of the Act, provided such trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950. and the entire income of such lands to appropriated for the purposes of such trust. In a proceeding where a claim is Bet up to exemption by the trust, what is necessary is to satisfy these two requirements. Sub-section (2) of Section 88-B of the Act indicates and embodies a rule of evidence, in that the certificate granted by the Collector after holding an inquiry is conclusive evidence with regard to the satisfaction of the two requirements. In an appeal from Manekji Edulji Mistry''s case taken to the Supreme Court, which affirmed the judgment, the Supreme Court Maneksha Ardeshir Irani and Another Vs. Manekji Edulji Mistry and Others, has observed thus:

"A contention was advanced on behalf of the appellant that the appellant was entitled to a notice when the Collector held an inquiry u/s 88-B (2) of the Act for the purpose of granting a certificate to the respondent The Collector u/s 88-B (2) of the Act grants a certificate after holding an Inquiry that the conditions in the proviso to Section 88-B (1) are satisfied by any trust. The Trust has to satisfy two conditions. First, the Trust is registered under the Bombay Public Trusts Act, 1950. Second, the entire income of the lands which are the property of the Trust is appropriated for the purposes of such Trust. The certificate granted by the Collector shall be conclusive evidence. The appellant raised this contention in the High Court that the appellant was entitled to a notice. The High Court did not accept the contention. The High Court held that the appellant at no stage denied the fact that the lands are the property of a Trust. The inquiry is between the Collector and the Trust. The conclusive evidence clause in the section means that it is a rule of evidence which would not render It necessary for it to prove again the compliance with the requirements."

The ratio of these observations on the submission that was made before the Supreme Court clearly indicates that in an inquiry under Sub-section (2) of Section 88-B notice is not a must and the issue arises between the Trust and the Collector. Certification proceeding, therefore, results in issue of a certificate which has been given the status of the conclusive proof under the statutory rule of evidence enacted by sub-section (2) and nothing more.

4. If this be the character of the certification proceeding before the Collector, in other words, the proceeding is initiated so as to have conclusive evidence with

regard to the satisfaction of the conditions on the basis of which the conditions required to be satisfied by Sub-section (1) can be proved to have existed, the question arises whether for the purpose of Section 76 the certificate can be treated as an order made by the Collector subject to revision before the Tribunal.

5. Now, this requires a little closer probe, firstly into the provisions of Section 88-B, which is the part of the total scheme beginning with Sections 88 to 88-B with regard to exemptions and savings enacted by the Act as applicable to certain lands. Section 88 enacts exemption with regard to the lands specified in Clauses (a), (b), (c), and (d) of Sub-section (1)" and the conditions therefor. Section 88-A1 makes special provisions in respect of tenants in villages specified in Schedule IV. Section 88-A exempts all lands transferred to or by Bhoodan Samiti recognised by the State Government in that behalf, Section 88-B exempts lands mentioned in Clauses (a), (b) (c) and (d) of Sub-section (1) from certain provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, and lays down the conditions or necessary requirements for entitlement of such lands to such exemptions. With regard to the proof of such requirements by the trust, the Collector is enabled to issue certificate under Sub-section (2) of Section 88-B and that certificate is treated as conclusive evidence in that behalf. Section 88-C, similarly, exempts application of certain provisions to lands leased by persons with the annual income not exceeding Rs. 1,500/- and in its body expressly provides for making of an application before the Mamlatdar, holding an inquiry after giving notice and rendering a decision with regard to the claim of exemption. Sub-section (4) of Section 88-C then states that when the Mamlatdar decides that the land is so exempt, he shall issue a certificate in the prescribed form. Sub-section (5) of Section 88-c makes that decision appealable to the Collector and subject to appeal the decision is final Section 74, which deals with appeals to the Collector, by Clause (w) of Sub-section (1) makes an order u/s 88-C appealable. Section 88-C therefore, clearly provides a distinctive modality, and highlights the difference between Section 88-B and Section 88-C, the latter enjoining upon the authority not only to give notice and to hold inquiry but to render a decision, which, as stated above, is treated as an appealable order, and the finality is attached to that decision or order made under the provisions of Section 88-C. In Section 88-B, no such express modality is provided for. Section 88-C is a provision where the provisions of the Act will not apply to certain types of leases, while Section 88-CA is a provision that Sections 32 to 32R are not to apply to certain service lands. Section 88-CB, similarly, makes Sections 32 to 32R not applicable to Saranjams. With regard to the provisions of Sections 88, 88-A, 88-B and 88-C, general power is conferred in favour of the State Government by Section 88-D to revoke the exemption by making an order to be published in the prescribed manner only with regard to specified categories. Section 88-D (1) (iii) provides that with regard to public trust''s lands, when the trust is unable to look after the property or has mismanaged it or that there are disputes between the trust and the tenants, the power u/s 88-D could be exercised by the State Government so as to take away the exemption available

to the public trust''s lands because of the provisions of Section 88-B (1) (b) of the Act.

6. This relay of these specific provisions clearly signifies the legislative object to exempt certain types of lands either entirely or to the specified extent from the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, subject however to the conditions being satisfied as laid down by the different provisions. The character of these provisions, therefore, should be viewed as independent and standing by themselves and should receive that interpretation which will further the obvious object of enacting these exemptive provisions. These, stated in brief, are full and complete schemes by themselves prescribing exemptions as well as the procedure for establishing its entitlement. Wherever the Legislature felt that any inquiry that partakes the haracter of a trial should be held before certification proceedings are concluded by an order, it has chosen to expressly provide for the same as is evidenced by the provisions and the scheme of Sec-ion 88-C. Not only that, wherever such . certification had to be preceded by my decision or order, explicit injunction in that regard is enacted in the body f these provisions. This is clear indication that the Legislature is aware of he modality wherein an inquiry that partakes in the nature of a trial ends by a decision or an order and other inquiries which merely end in the issue of the certificate, the issue being between the authority indicated and the person seeking the certificate. If, there-tore, no order or decision precedes or is required to precede the issuance of the certificate, it follows that the general provisions of Section 76 would not operate upon a certificate issued by the Collector. No doubt, Sub-section (2) of Section 88B requires the Collector to issue the certificate after holding an inquiry, but it is obvious that the said inquiry does not partake in the character of any trial which should end in an order. It is an inquiry for the purpose of entitlement to acquire a piece of conclusive evidence on certain matters, on the proof of which the statutory exemption under Sub-section (1) of Section 88-B is available. It is not as if that when the certificate is not available, exemption is not available under Sub-section (1). It is when its entitlement is in issue between the parties that the party claiming the exemption has to show that it satisfies the conditions laid down by Sub-section (1). The certification proceeding under subsection (2) is merely an aid for the purpose of acquiring conclusive proof with regard to the conditions enacted by subsection (1). Therefore, the word "inquiry" in Sub-section (2) cannot be treated as equivalent to any judicial trial which must necessarily end by rendering a decision or making an order. By the very nature of things, in the matters of the trust, the conditions being that the trust is or deemed to be registered under the Bombay Public Trusts Act and the entire income of lands is appropriated for the purposes of the trust, no lis arises between any parties nor any adjudication as such is called for. Once the Collector is satisfied that these conditions exist, then he is enabled to issue the certificate, which is treated as conclusive evidence.

7. In the scheme and object of subsection (1) of Section 88-B also there are indications as to (to) what extent the provisions of Section 76 (that is the re-

visional power of the Tribunal) will be available with regard to the lands subject to exemption u/s 88-B. Section 76 happens to be a provision in Chapter VI. All the provisions of Chapter VI have not been made applicable, but the provisions of Chapter VI and Chapter VIII, in so far as they are applicable to the matters covered by Sections 3,4-B, 8.9, 9-A, 9-B, 9-C, 10, 10A,-11, 13 and 27, are only made applicable. In other words, whenever the matters arise under these provisions and the authorities which conferred with power in that regard are seized of the jurisdiction and make competent orders, such orders can be subjected to process of challenge, either by way of appeal or revision. By restrictive application of Chapter VI in this manner, of which Section 76 is a part, it is clearly intended that the generality of Section 76 is not available with regard to the process of certification contemplated by subsection (2) of Section 88-B.

8. Thus, upon the fair construction of the content and the character of process of certification, it appears reasonable to interpret that the words available in Sub-section (2) treating the certificate as conclusive evidence are also the matters of some legislative significance. The term "conclusive" as an adjective of the word "evidence" is a usual modality adopted by the legislative language, the effect of which is to achieve the aim of giving finality to the establishment of the existence of the fact for the purpose of the proof thereof. (See Smt. Somavanti and Others Vs. The State of Punjab and Others, . while interpreting the provisions of Section 6(3) of the Land Acquisition Act, 1894 which employs the phraseology of "conclusive evidence"). If the connotation of the term "conclusive" takes in the finality, it should logically follow that as far as the certification is concerned, the statute attributes a finality not subject to be questioned in the same proceeding for certification. Legislative finality would be achieved by terminating the proceeding before the given authority and excluding a further challenge to the authoritative act. The words chosen by the Legislature, being "conclusive evidence", do not admit any challenge to it in any higher jurisdiction, unless there be express provision in that regard. The contrast in legislative drafting of the provisions of Sections 88-B and 88-C is vital and underscores the concept of conclusiveness or finality that is attached to the certification proceedings before the Collector contemplated by Sub-section (2) of Section 88-B.

9. Rule 52 of the Bombay Tenancy and Agricultural Lands Rules, 1956 lays down the procedure for grant of certificate by the Collector u/s 88-B and sub-rule (3) states that on receipt of an application, the collector shall hold an inquiry and after satisfying himself that the conditions laid down in the proviso to Sub-section (1) of Section 88-B exist, he shall issue a certificate. These Rules also do not in any manner suggest that the Collector is required to make any order before he issues a certificate, which is treated as conclusive evidence under Sub-section (2) of Section 88-B.

10. Now, it cannot be disputed that jurisdictions in appeal and revision are the creatures of the statute and but for them the same cannot be exercised. Section 76, which deals with revision to the Maharashtra Revenue Tribunal, confers the

power of revision by using the phrase "against any order of the Collector". The word "any" is suggestive of every order provided the same is made by the Collector, either in original exercise of jurisdiction or an appellate exercise of jurisdiction. Section 74 deals with appeals before the Collector and all orders rendered thereunder would be subject to revision, unless otherwise excluded by any other provisions, u/s 76 of the Bombay Tenancy and Agricultural Lands Act, 1948. There are other provisions, like Section 73-A conferring power on the Collector in inquiries under Sub-section (3A) of Section 29, which requires that an application for possession u/s 43-1B has to be made to the Collector. The order of the Collector is treated as final subject to revision, not to the Tribunal but to the State Government. u/s 66, the Collector is enabled to make an award with regard to acquisition of estate or the interest specified in that provision in favour of the State Government and by virtue of Section 75, that original award is subjected to appeal before the Maharashtra Revenue Tribunal. u/s 76-A, the Collector is conferred with revisional powers where no appeal has been filed within the period provided for it and the order made thereunder may appropriately be the order of the Collector amenable to the provisions of Section 76. When the matter arises u/s 70, the orders are subjected to appeal before the Collector and they are further subjected to revisional jurisdiction u/s 76. It is the distinctive feature of Chapter VI, therefore that the original orders made by the Collector are not generally subjected to re-visional jurisdiction of the Tribunal. When it is a matter of award, an appeal is provided to the Tribunal. When it is a matter with regard to possession of land u/s 29 (3A), a revision is provided to the State Government. This scheme suggests that in every matter, wherever there is an order of the Collector, the Tribunal''s power in revision is not available, though Section 76 uses the words that that power is required to be available against every order of the Collector. It is implicit, therefore, that by express contemplation, adjudication before the Collector or the proceedings before the Collector can be treated and is, in fact, treated final in some specified matters. That finality may be indicated by express terms as are available in subsection (5) of Section 88-C or as is suggested by Sub-section (2) of Section 88-B of the Act. It, therefore, follows that mere references to the wide and general phraseology employed by Section 76 will not be decisive of the jurisdiction of the Tribunal, nor, only because it happens to be an order of the Collector, revisional power would be available. It must further be seen that such a revision is, in fact, provided for by the given scheme of the provisions. As indicated above, upon interpretation of Section 88-B anc particularly in contrast with Section 88-C the legislature has left the matter of certification under Sub-section (2) of Section 88-B to the authority of the Collector to which a conclusive character is , expressly attached.

11. Now, turning to the apprehension of the learned Counsel for the respondents that because of the wide scope of the exclusion of these benevolent provisions of law the persons aggrieved by such certification would be without remedy, it can only be observed in this context that the finality attached by the State statutes

to any such jurisdiction does not affect the extraordinary jurisdiction conferred by the Constitution upon the High Courts when the matters are properly brought before them and adjudicated upon in respect of the validity or otherwise ''of the proceedings with regard to certification. Only because finality is given to a particular stage of , proceedings, like the one for certification, it does not follow that the Legislature has left loop holes, in the scheme of enactment of the jurisdictions and has left the parties without any remedy. The character of the certification proceeding being between the Collector and the applicant trust and the certificate being merely the conclusive piece of evidence the Legislature should be presumed to have left the matters in its wisdom at the stage of the Collector itself.

12. In the result, therefore, it has to be concluded that Section 76 was not available to the Tribunal to interfere with the certificate issued by the District Deputy Collector in exercise of his powers u/s 88-B (2) of the Bombay Tenancy and Agricultural Lands Act, 1948. That order made by the Tribunal and impugned in this petition is, therefore, set aside. Rule made absolute with no order as to costs.

13. Rule made absolute.

