

(1989) 10 BOM CK 0037

In the Bombay High Court

Case No : Writ Petition No. 5819 of 1988

Kacharu Lakhu Aher

APPELLANT

Vs

Masjid Mandwad Deosthan and Others

RESPONDENT

Date of Decision : 13-10-1989

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G(6), 88(1), 88CA
Exemptions from Land Revenue Act, 1863 — Section 8, 8(3)

Citation : (1990) 3 BomCR 261 : (1989) 91 BOMLR 186 : (1990) MhLj 440

Hon'ble Judges : Sujata Manohar, J

Bench : Single Bench

Advocate : M.V. Sali, for the Appellant; V.D. Bhavsar, for respondent Nos. 1, 2, 4, 5 and 6, for the Respondent

Judgement

Sujata Manohar, J.

The petitioner claims to be a tenant of the respondents in respect of Survey No. 227 admeasuring 21 acres and 22 gunthas situated at village Mandwad, Taluka Nandgaon, District Nasik and assessed at Rs. 5.50. According to the petitioner he is cultivating this land as a tenant of the respondents for more than 45 years.

2. In 1957 the 1st respondent Shaikh Bashir Shaikh Pathan filed a suit against the petitioner u/s 29 read with section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 before the Tenancy Court, being Tenancy Suit No. 121 of 1957, for possession on the ground that he required the lands bona fide for personal cultivation. The Tenancy Mahalkari, Nandgaon by his order dated 29-10-1958 held that tenancy of the petitioner to the extent of 1/4th part of the said survey number should be terminated and possession of this 1/4th portion amounting to 5 acres and 15? gunthas should be handed over to the applicant landlord. The petitioner preferred an appeal from this order being Tenancy Appeal No. 58 of 1959. One of the contentions raised before the District Deputy Collector Malegaon who heard this appeal was that the suit land was Devasthan land and hence the provisions of the Bombay Tenancy and Agricultural Lands Act,

1948 do not apply to the suit land. This objection was negated by the District Deputy Collector who observed that in the case of Devasthan which are not registered public trusts under the Bombay Public Trusts Act, the position of the tenants is the same as that of tenants of other lands. After considering all aspects the District Deputy Collector dismissed the appeal and ordered that the entire land should continue to be with the petitioner.

3. Thereafter on 12th December, 1959 the 1st respondent trust, that is, Masjid Mandwad Deosthan Trust, was registered under the provisions of the Bombay Public Trusts Act. On 7th June, 1985 the said trust filed a proceeding u/s 88-B of the Bombay Tenancy and Agricultural Lands Act against the petitioner and sought a declaration that the land being Trust property, was exempt from the provisions of the Bombay Tenancy and Agricultural Lands Act. Hence exemption certificate u/s 88-B should be granted in respect of this land to Trust. The Sub-Divisional Officer, Malegaon Division, who heard this application held that the material placed before him did not reveal any specific purpose for which the trust was created; nor was there any material to show that the total income derived from the suit land was being used for the purposes of the trust. He held that the mandatory conditions prescribed under Rule 52 of the Bombay Tenancy and Agricultural Lands Rules were not fulfilled. The conditions u/s 88-B were also not fulfilled. Hence the application was rejected.

4. The respondents then filed Tenancy Case No. 5 of 1982 against the petitioner before the Tahsildar at Nandgaon under sections 14, 29 and 31 of the Bombay Tenancy and Agricultural Lands Act, 1948 for possession on the ground of arrears of rent. The application was dismissed by a judgment and order dated 30-11-1984 of the Tahsildar and A.L.T. Nandgaon. The respondents preferred an appeal being Appeal No. 15 of 1984. The Sub-Divisional Officer by his Order dated 7th June, 1985 dismissed the appeal. In his order the Sub-Divisional Officer has observed that the trust had been registered only in 1959. The trust had not obtained a certificate u/s 88-B and that the petitioner had become a deemed purchaser of this land.

5. From this order the respondents filed a Revision Application before the Maharashtra Revenue Tribunal u/s 76 the Bombay Tenancy and Agricultural Lands Act challenging the Order dated 7-6-1985 of the Sub-Divisional Officer, being Tenancy Revision Application No. 184 of 1985. The Maharashtra Revenue Tribunal, after setting out the dispute between the parties, held that the Sanad dated 18th December, 1861 granted by the Government in favour of the Masjid regarding the suit land showed that the suit land was Devasthan Inam, Class III. The land was gifted to the Masjid for the purpose of maintenance of the Masjid. By operation of law, the land in question was therefore not transferable either by assignment, sale, gift, device or otherwise. Therefore the petitioner could not become a deemed purchaser of these lands although he was a tenant of the suit land and was in possession of the suit land on 1-4-1957. On this ground the Revision Application was dismissed as not maintainable because the Tenancy Act

was held to be not applicable to this land. The Tribunal did not go into the merits of the decision of the lower Court. In the present writ petition the petitioner has challenged this finding of the Maharashtra Revenue Tribunal.

6. The suit land is Devasthan Inam Class III. This land however, is assessed to full land revenue at the rate of Rs. 5.50. The question is whether this land is excluded from the operation of the Bombay Tenancy and Agricultural Lands Act, 1948. The learned Advocate for the respondents placed strong reliance on the provisions of section 8 of the Exemptions From Land Revenue (No. 1) Act, 1863, being Bombay Act No. II of 1863. The Preamble to the Act sets out that this Act, inter alia, provides for the final adjustment, summarily, of unsettled claims to exemption payment of land revenue from the, and to fix the conditions which shall secure, in certain cases, the recognition of titles to such exemption with respect to succession and transfer in those districts of the Bombay Presidency to which the operation of Act XI of 1852 of the Legislative Council of India extends. u/s 8, Clause (3) of this Act it is declared, that, "lands held on behalf of religious or charitable institutions wholly or partially exempt from the payment of land revenue, shall not be transferable from such institutions either by assignment, sale (whether such sale be judicial, public or private), gift, devise or otherwise howsoever, and no nazarana shall be leviable on account of such lands".

7. u/s 8 sub-section (3) there is a prohibition on the transfer of lands held on behalf of religious or charitable institutions which are partially or wholly exempt from payment of land revenue. In the present case, however, full land revenue, is payable in respect of this land. It is not clear whether in 1861 when the Sanad was granted this land was wholly or partially exempt from the payment of land revenue. I will, however, assume that initially the land was so exempt. There is no material on record to show how and when this exemption was withdrawn by the Government and the lands were assessed to full land revenue. On the record of rights, at all times material to this dispute, there is no exemption, complete or partial, from payment of land revenue in respect of this land. The prohibition against transfer, therefore, u/s 8 sub-Clause (3) cannot apply to the suit land.

8. In H.S. Phadnis's "Hereditary Offices Act", Fourth Edition, Appendix 5 page 287, it is stated, "The devasthan lands in the territories to which Bombay Act II of 1863 applies, viz., the Districts of the Dekkan, Karnatak and Khandesh are inalienable by virtue of section 8..... In G.R. No. 12302, December 2, 1908. Government have laid down that full assessment should be levied from the alienees of devasthan lands, in cases where it is ascertained, (1) that the profits of the inam land have been permanently diverted from the institution for which it was granted or continued as endowment property; (2) that the terms of the settlement or adjudication permit of the levy of the full assessmentDevasthan lands are made Khalsat by levy of full assessment when they are mortgaged for a long term or the temple is destroyed etc."

9. In the present case there is no material before me to indicate as to when and in what circumstances full assessment was levied in respect of the suit land. In

view of the full assessment which is being levied, the protection u/s 8 of the Bombay Act No. II of 1863 is no longer available to these lands.

10. It is also pointed out by learned Advocate for the petitioner that even u/s 8, Clause (3) there is a prohibition only against transfer of land by way of assignment, sale, gift, devise or otherwise. He has submitted that the last two wordings "or otherwise" must be read ejusdem generis with the preceding words to cover any mode of transfer which conveys the entire interest in property. He has submitted that this prohibition does not extend to a lease of such lands. There is considerable force in this submission. It is however not necessary for me to me into this submission because, in any case, the present lands are no longer wholly or partially exempt from payment of land revenue. Looking to the purpose of the Bombay Act II of 1863 which is to regulate the succession to and transfer of lands which are wholly or partially exempt from the payment of land revenue, it is apparent that the prohibition against transfer u/s 8 Clause (3) can apply only when the lands are wholly or partially exempt from land revenue and not otherwise.

11. In the case of *Ramijiabi Maktumsaheb Jamadar v. Gudusaheb wd Faridsaheb Avati*, reported in 54 Bom.L.R. 405 the provisions of Bombay Act II of 1863 along with the provisions of the Bombay Rent-free Estates Act (XI of 1852), and the Bombay Hereditary Offices Act, 1874 were considered by a Division Bench of this Court. The Court held that if property is, which was originally watan property continued with the holder thereof, but without the holder having render services and with full levy of assessment from him, the effect of such continuance is that the property ceases to be watan property and is converted into a ryotwari holding in which the holder is invested with the rights of an ordinary occupant. In the present case also though the lands have continued with the original holders there is no material to show that the holders have fulfilled their obligations attached to the Devasthan land. Full levy of assessment is also made on this land. The provisions of section 8 of Clause 3 are therefore not attracted.

12. In the case of *Bachharam Datta Patil v. Vishwanath Pundlik Patil*, reported in 59 Bom.L.R. Page 93 the Supreme Court considered a case where the record of rights showed that the full assessment was being levied in respect of lands which were originally watan lands, and services were not required to be performed. These lands were described as Japti Sanadi Inam lands. There was no evidence as to the original character of the grant or as to how and when the grant was resumed. It was held that the lands ceased to have the character of watan and were subject to the ordinary law of tenures in the Bombay State. The Supreme Court also observed that an authority which had the power to make a grant also had the power to revoke the grant and on such revocation the land would become subject to land revenue assessment. Section 8(3) therefore does not help the respondents.

13. My attention was also drawn to the provisions of section 32-G(6) of the Bombay Tenancy and Agriculture Lands Act, 1948. u/s 32-G(6) if any land which,

by or under the provisions of any of the Land Tenures Abolition Acts referred to in Schedule III to this Act is regranted to the holder thereof on condition that it was not transferable, such conditions shall not be deemed to affect the right of any person holding such land on lease created before the regrant. Such a person shall, as a tenant, be deemed to have purchased the land under this section, as if the condition that it was not transferable were not the condition of regrant. I fail to see how section 32-G(6) has any relevance of the present case because this is not a case of regrant under any of the Land Tenures Abolition Acts referred to in Schedule III.

14. My attention was also drawn to section 88 of the Bombay Tenancy and Agricultural Lands Act, 1948 which deals with exemption of certain types of lands from the provisions of the Act. u/s 88(1)(a) lands belonging to or held on lease from the Government are so exempted. In the present case the lands do not belong to the Government, nor are they learned from the Government. The lands belong to the respondents and the petitioner is a tenant from the respondents. Therefore exemption u/s 88(1)(a) does not cover these lands.

15. Under the explanation to section 88(1) it is provided that for the purposes of Clause (a) of sub-section (1) land held as Inam of watan for service useful to the Government and assigned as remuneration to the person actually performing such service for the time being u/s 23 of the Bombay Hereditary Offices Act, 1874, or any other law for the time being in force, shall be deemed to be land belonging to the Government. Such is not the present case since this is a Devasthan Inam property and not an Inam for services useful to the Government. The ratio of 1979 Mh.L.J. page 628 Dutta Dayanu Padalkar v. Hari Natha Patil and another, also does not apply because in that case the trust was managed by the Government and the land was given by the Collector on yearly lease by auction. Hence section 88(1)(a) was directly applicable.

16. Section 88-CA, provides that nothing in sections 32 to 32-A, 33-A, 33-B and 33-C shall apply to land held as Inam or watan for service useful to Government but not assigned as remuneration to the person actually performing such service for the time being u/s 23 of the Bombay, Hereditary Offices Act, 1874, or any other law for the time being in force. This section also does not cover the case of Devasthan Inams where lands are held for service of the Devasthan. I have not been shown any other provision under which these lands can be considered as exempt from other operation of the Bombay Tenancy and Agricultural Land Act, 1948.

17. The petitioner has been lawfully cultivating these lands for more than 45 years. He is therefore entitled to the benefit of the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948.

19. It was submitted by the petitioner that in an earlier proceeding between the same parties namely, in Tenancy Appeal No 58 of 1959 before the District Deputy Collector the same contention, namely, that the land being Devasthan land, the

provisions of the Bombay Tenancy and Agricultural Lands Act do not apply, was negated by the District Deputy Collector. He has held that Devasthanans which are not registered public trusts cannot get the benefit of exemption. The position of tenants of such land is the same as that of tenants of other lands. It was contended that this finding is binding on the parties and the issue has become res-judicate. Since even otherwise, the contention has no merit, I need not examine the plea of res-judicata.

In the premises the order of the Maharashtra Revenue Tribunal at Bombay dated 2nd March, 1980 is set aside and the matter is remanded to the Maharashtra Revenue Tribunal for decision on the merits of the case in accordance with law.

Rule is made absolute accordingly with costs.