
(1990) 08 BOM CK 0083
In the Bombay High Court
Case No : Writ Petition No. 625 of 1981

Keraba Dattu Borachate and Others	APPELLANT
Vs	
Sheshashai and Vishnu Trust	RESPONDENT

Date of Decision : 14-08-1990

Acts Referred:

Bombay Public Trusts Act, 1950 — Section 2(13)
Bombay Tenancy and Agricultural Lands Act, 1948 — Section 88B(1), 88B(2)

Citation : (1990) 3 BomCR 656

Hon'ble Judges : M.L. Pendse, J; M.F. Saldanha, J

Bench : Division Bench

Advocate : S.M. Dandekar and B.N. Naik, for the Appellant; A.P. Mundargi, for the Respondent

Judgement

M.L. Pendse, J.—The question for determination in this petition is filed under Article 226 of the Constitution of India is whether a tenant in occupation of agricultural land is entitled to notice before the Collector issues exemption certificate in favour of a Public Trust as contemplated u/s 88-B(1)(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the "Act"). The petition is referred to Division Bench by the learned Single Judge at the stage of admission as it was felt that the decision of the Single Judge in the case of Shrimant Jagdesras Anandrao Pawar v. Kisan Namdeo Pawar and others, reported in 1979 Maharashtra Law Journal 687 holding that notice is not required to be served on the tenant requires reconsideration.

2. The respondent is a Public Trust and claims to be registered under the Bombay Public Trust Act, 1950. The Trust owns agricultural lands bearing Gat No. 1061 at Village Beneli and Gat No. 1894 at village Kothali in Karvir Division of Kolhapur District. The lands are leased out to the petitioners and the rights of the tenants are regulated by the provisions of the tenancy Act. The trustees instituted Tenancy Application No. 5 of 1977 before the Sub-Divisional Officer, Kervir Division, Kolhapur for grant of exemption certificate u/s 88-B(1)(b) of the Act.

The Trustees claim that income accrued from the agricultural lands is Rs. 600/- and the entire income is spent for the object of the Trust. Initially, some of the petitioners were added as party respondents to the application but subsequently their names were deleted as the Sub-Divisional Officer felt that it was not necessary to serve notice on the tenants and it is not permissible for the tenants to resist the proceedings as the proceedings are entirely between the Trust and the Collector. The Sub-Divisional Officer by order dated November 13, 1979 allowed the application and granted exemption certificate holding that the Certificate of Registration under the Public Trust Act is produced and the accounts are verified by the Government Auditor and, the conditions u/s 88-B(1)(b) are complied with. Against the decision recorded by the Sub-Divisional Officer, the petitioners carried revision before the Maharashtra Revenue Tribunal but the same was withdrawn as the Tribunal had no jurisdiction to entertain revision application. The petitioners have thereafter filed the present petition to challenge the legality of the order of the Sub-Divisional Officer.

3. The principal contention urged on behalf of the petitioners is that the action of the Sub-Divisional Officer in issuing exemption certificate without notice to the petitioners tenants is entirely illegal and, therefore, the order is required to be set aside. To appreciate, the contention, it is necessary to set out the relevant provisions of section 88-B of the Act. Section 88-B(1)(b) of the Act reads as under :

(1) Nothing in the foregoing provisions except sections 3, 4-B, 8, 9, 9-A, 9-B, 9-C, 10, 10-A, 11, 13, and 27 and the provisions of Chapter VI and VIII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in the sections mentioned above shall apply---

(b) to lands which are the property of a trust for an educational purpose, a hospital, Panjarapole, Gaushala or an institution for public religious worship :

Provided that---

(i) such trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950 and

(ii) the entire income of such lands is appropriated for the purpose of such trust."

Sub-section (2) of section 88-B reads as under :

"For the purposes of this section, a certificate granted by the Collector, after holding an inquiry, that the conditions in the provision to sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf."

The plain reading of section 88-B makes it clear that an exemption certificate can be granted in favour of the Trust which has leased out the land provided the Trust is for an educational purpose, a hospital, Panjarapole, Gaushala or an institution for public religious worship. The Collector before issuing exemption certificate must satisfy that (a) such trust is or is deemed to be registered under

the Bombay Public Trusts Act, 1950, and (b) the entire income of such lands is appropriated for the purposes of such trust. Sub-section (2) prescribes that the exemption certificate granted by the Collector, after holding an inquiry shall be conclusive evidence in that behalf. The consequence of grant of exemption certificate is that the tenants of the agricultural lands in respect of which exemption certificate is granted lose valuable rights of becoming purchasers on the tillers day. Section 88-B prescribes that on grant of exemption certificate except sections which are set out in sub-section (1), the other provisions of the Tenancy Act will not be attracted in respect of the said lands. Section 32 of the Act provides that on April 1, 1957 which is known as tillers day, every tenant shall be deemed to have purchased from his landlord the land held by him as tenant and free of all encumbrances subsisting on the said day. Section 32 onwards of the Act then set out the mode of determining purchase price and the mode of payment by tenant. The Tenancy Act was enacted by the legislature to confer substantial right upon the cultivator of the land in accordance with the Constitutional mandate. The right conferred upon the cultivator u/s 32 of the Act stands excluded in respect of the lands belonging to the Trust on grant of exemption certificate. It is, therefore obvious that the consequence of grant of exemption certificate by the Collector and which is made conclusive evidence results into serious prejudice to the interest of the tenant. Indeed, on grant of exemption certificate, the landlord is not required to approach the Tenancy authorities to seek recovery of possession but can institute proceedings in regular Civil Court on the basis that the relationship of the lessor and lessee is regulated by the provisions of the Transfer of property Act. It hardly requires to be stated that the tenant of an agricultural land who is deprived of protection of the provisions of the Tenancy Act can have no answer when the suit is instituted by the Trust in regular Civil Court for recovery of possession. It is, therefore, obvious that grant of exemption certificate seriously prejudices the rights of the cultivator of an agricultural land. We are, therefore, unable to appreciate the contention urged on behalf of the Trust that the inquiry held by the Collector before grant of exemption certificate is a matter exclusively between the Collector and Trust and the tenants are not entitled either to appear in such proceedings or resist the claim of the Trust. The Sub-Divisional Officer has also proceeded on the basis that tenants are not necessary parties and notice is not required to be served on the tenant before grant of exemption certificate.

4. In our judgment, the view taken by the Sub-Divisional Officer is in violation of the rules of natural justice. The rules of natural justice come into play where there is a duty to act judicially or fairly. One of the requirement of natural justice is that no man shall be condemned unheard. Lord Denning in the judgment reported in 1962 appeal Cases 322 Kenda v. Government of Malaya, observed that the essential characteristic of what is often called "natural justice" the Domene put them in the two maxims : *Nemo iudex in causa sua* : and *audi alteram partem*. They have recently been put in the two words "importantly" and "fairness". The main requirements of a fair hearing are two : (i) a person must

know the case he has to meet, and (ii) he must have an adequate opportunity of meeting that case. It is not possible to lay down what should be the test of a fair hearing in respect of all kinds of cases. The recent statutes have extended the practice of imposing upon departments or officers of State the duty of deciding or determining questions of various kinds and it will usually be of an administrative kind though it involves matter of law as well as matter of fact. It is now well settled by catena of decisions that the principles of natural justice come into play not only in respect of a judicial or quasi judicial enquiry but also in respect of administrative actions resulting into deprivation of valuable rights of property. Lord Denning in the decision of the case of *A. v. Gaming Board En. Bensis*, reported is 1970(2) Queens Bench 417 observed that at one time it was said that the principles of natural justice only apply to judicial proceedings and not to administrative proceedings. This was corrected in *Ridge v. Baldwin*. It was held that the principles applied even to grant or revocation of licences. In *Ridge v. Baldwin*, 1964 Appeal Cases 40 which is a landmark decision, Lord Reid observed that authorities dealing with property rights and privileges must hear the parties even though the statute does not set out any positive words of such requirement. It was held that the exercise of many powers which in common understanding were no more judicial proceedings must satisfy the principle that no man should be deprived of his property without his having an opportunity to be heard. The principles laid down by the English Courts are referred to with approval by the Supreme Court and it would suffice if reference is made to the decision in the case of *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . Mr. Justice Shah as he then was speaking for the Court observed :

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fairplay. The deciding authority, it is true; is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed; it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

It is now well-settled that any authority whether exercising power judicially or

administratively when determining the property rights must give proper hearing before passing adverse orders.

5. It was, therefore, rightly contended by the petitioners that grant of exemption certification u/s 88-B of the Act concludes a valuable right of a cultivator of the agricultural land to become purchaser on the tiller's day. It was therefore, improper on the part of the Sub-Divisional Officer to held that the tenants are not entitled to notice and the hearing before grant of exemption certificate. We find considerable merit in the submission of the learned Counsel. On behalf of the Trust, strong reliance was placed on the decision of the Single Judge of this Court in the case of *Shrimant Jagdeorao Anandrao Pawar v. Kisan Namdeo Pawar and others*, reported in 1979 Maharashtra Law Journal 687 where the learned Judge held that in an inquiry u/s 88-B(1)(b) of the Act, notice is not a must and the issue arises between the Trust and the Collector. It was further held that though sub-section (2) of section 88-B requires the Collector to issue a certificate after holding enquiry, the said enquiry does not partake of the character of trial which should end in an order. The learned Judge felt that it is an enquiry for purposes of entitlement of acquire a piece of conclusive evidence on certain matters and therefore, the word "inquiry" in section 88-B cannot be treated as judicial trial which must and in an order of decision. The learned Judge realised that the grant of certificate under sub section (2) by rule of evidence provides that it will be conclusive evidence that the Trusts is registered under the Bombay Public Trust Act, 1950 and the entire income of lands is appropriated for the purpose of the Trust but did not take into consideration the adverse consequences which the tenants have to suffer by grant of exemption certificate. The Single Judge was impressed by the fact that section 88-C which also provides for grant of exemption certificate and exclusion of certain provisions of the Tenancy Act on satisfaction of certain conditions, prescribed for giving of notice to the tenant, holding of an enquiry and then recording a decisions and which is also made appealable. The learned Judge felt that the fact that section 88-C of the Act does not specifically provide for notice to tenants, it must be assumed that the Legislature never intended that while granting exemption certificate u/s 88-B, the Collector was duty bound to serve notice upon the tenants. The learned Judge also draws support for his conclusion from the observations of the Supreme court in the case of *Maneksha Ardeshir Irani and Another Vs. Manekji Edulji Mistry and Others*, . With respect, we are unable to share the view of the learned Single Judge, and we overrule the same.

The reliance of the learned Judge on the provisions of section 88-C of the Act to held that the Legislature never intended that notice should be issued to the tenants and inquire should be held in their presence before grant of exemption certificate u/s 88-B of the Act is not appropriate. It is not well settled that when valuable property rights of a party are affected, then irrespective of the fact whether the Statute specifically provides for issuance of notice and inquiry, the forum is duty bound to serve notice upon the person whose rights are going to be adversely affected. The principles of natural justice demand that the valuable

property rights should not be deprived without the person being given sufficient opportunity to meet the claim. The Trust is entitled to an exemption certificate provided two facts are established: (a) that the Trust is or is deemed to be registered under the Public Trusts Act and (b) the entire income of lands is appropriated for the purposes of the Trust. Now, these two questions which are required to be determined by the Collector demand proof of certain facts and it is not permissible to hold that the Collector can conclude the inquiry without giving an opportunity to the tenants who are directly affected by grant of certificate. The tenant could very well establish that the Trust is not registered before tiller's day or, in any event, the entire income of the Trust is not appropriated towards the object of the Trust. By holding that the issue arises only between the Trust and the Collector, the learned Single Judge deprived the tenants from establishing that the Trust is not entitled to exemption certificate. Sub-section (2) of section 88-B of the Act prescribed by rule of evidence that the exemption certificate is conclusive evidence as regards the conditions provided u/s 88-B(1) (b) of the Act and, therefore, there is a greater necessity that the tenants who are going to be seriously prejudiced by grant of such exemption certificate should be served with the notice and permitted to participate in the inquiry. The deprivation of a right in such an important inquiry conducted under the Statute, which was enacted by the Legislature for conferring valuable rights upon the Cultivators and the Legislation being a beneficial one is neither just, nor fair. Merely because the Legislature did not specifically provide for service of notice and opportunity for the tenants to participate in the inquiry, it is not permissible for the Court to deprive the tenants of their valuable rights in the agricultural lands by concluding that the enquiry is only between the Collector and the Trustees. The Collector while exercising the powers, even assuming performing administrative duties, still is bound to serve notice upon the persons whose property rights are affected.

6. The learned Single Judge drew support for his conclusion from the observations of the Supreme Court in the case of *Maneksha Ardeshir Irani* (supra). The Supreme Court in paragraph 14 of the judgment observed :

"A contention was advanced on behalf of the appellant that the appellant was entitled to a notice when the Collector hold an inquiry u/s 88-B(1) of the Act for the purpose of granting a certificate to the respondent. The Collector u/s 88-B(1) 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 Trust 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."

It is necessary to examine in what context the observations were made by Chief Justice Ray speaking for the Court. In the case before the Supreme court, a tenant was inducted on agricultural land on March 1, 1943 and the lease was for a duration of five years with a clause for renewal for five years. The lease expired on February 28, 1948. As the lease did not exercise the option of renewal, the lesser thereafter terminated the tenancy and instituted a suit in the Regular civil Court for recovery of possession. The trial Court dismissed the suit for recovery of possession and in appeal the High Court concurred with that view. The Supreme Court remanded the matter to the High Court for a report on two questions. First, whether the appellant was a protected tenant on March 1, 1953, and second whether the lessee could claim benefit of section 5 of the Amending Act, 1952. The High Court submitted the report holding that the lessee was a protected tenant but was not entitled to claim the benefit of section 5 of the amending Act. The Supreme Court affirmed both the findings of the High Court and set aside the judgment of the High Court but again directed the High Court to determine whether there was valid termination of the tenancy. The High Court on remand held that the lessee was not entitled to any notice and the lessee was a tenant on sufferance. Thereafter, the appeal came up for hearing before the Supreme Court and the contention was raised that the lessee is entitled to protection u/s 4-B of the Tenancy Act because the lessee is holding over and the tenancy cannot be terminated by efflux of time. Section 4-B, inter-alia, provides that no tenancy of any land shall be terminated merely on the ground that the period fixed by agreement or usage for its duration has expired. While examining this contention, the Supreme Court observed that the provisions of section 4-B of the Act are not attracted because the contractual tenancy ceased on February 28, 1948 and thereafter the lessee was in occupation on sufferance. The Supreme Court held that there was no question of holding over because there was no contractual tenancy. The Supreme Court held that as the lessee remained in possession on sufferance, section 4-B of the Act has not application because there is no tenancy. The tenancy being a matter of privity between parties, the lessee, according to the Supreme Court, was a trespasser.

Thereafter the Supreme Court dealt with the contention that the lessee was entitled to a notice when the Collector hold an inquiry u/s 88-B (1) of the Act for grant of exemption certificate. The Supreme Court while dealing with this contention observed that the lessee at no stage denied the fact that the lands are the property of a Trust and thereafter the observation was made "The inquiry is between the Collector and the trust". The observation of the Supreme Court in paragraph 14 of the judgment must be read in its proper perspective. The Supreme Court, after holding against the lessee on the question of protection u/s 4-b of the Act and concluding that the lessee was a rank trespasser, was examining the question as to whether the lessee was entitled to a notice before grant of exemption certificate u/s 88-B of the Act. The observations of the

Supreme Court in this context were that a person claiming to be a lessee was found to be rank trespasser and was not entitled to any protection under the provisions of the Tenancy Act. The observations that the inquiry is between the Collector and the Trust therefore, must be read with reference to the peculiar facts of the case before the Supreme Court. In our judgment, it is not possible to conclude that the Supreme Court intended to lay down that in the enquiry conducted by the Collector under sub-section (2) of section 88-B of the Act, it is not necessary to serve any notice upon the tenant whose valuable property rights would be destroyed by grant of exemption certificate. In our judgment, the reliance upon the decision of the Supreme Court by the Single Judge was not accurate. In our judgment, the Collector is bound to issue a notice to the tenant of the agricultural lands before holding an enquiry and must permit the tenant to participate in the inquiry before granting exemption certificate u/s 88-B of the Act. As Sub-divisional Officer has failed to serve notices upon the tenants in the present case, the impugned order cannot be sustained.

7. Accordingly, this petition succeeds and the impugned order dated November 13, 1979 passed by the Sub-divisional Officer, Karvir Division, Kolhapur in Tenancy Application No. 5 of 1977 and copy of which annexed as exhibit "A" to the petition is set aside and the proceedings are remitted back to Sub-Divisional Officer for holding a fresh inquiry after service of notice on the tenants and permission to participate in the inquiry. The Sub-divisional Officer should pass the final order on the application filed by the respondents after giving a fair opportunity to the tenants to answer the claim of the respondents. The Sub-divisional Officer should dispose of the proceedings as expeditiously as possible. In the circumstances of the case, there will be no order as to costs.