(2007) 05 RAJ CK 0048

In the Rajasthan High Court

Madan Lal APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 15-05-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2007) 4 RLW 3447

Hon'ble Judges : P.B. Majmudar, J;Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.B. Majmudar, J.—We have heard the learned Counsel for the parties.

2. All these appeals are already admitted and at the time of considering the question regarding confirmation of interim relief, we have requested the learned Counsel to address us on merits of this appeal and the learned Counsel appearing for both the sides have argued the matter finally and therefore, the appeals are disposed of by this common judgment finally.

3. All the appeals are directed against the decision of the learned Single Judge delivered in S.B. Civil Writ Petition No. 2278/2003, 2280/2003 and 2279/2003 respectively.

4. The learned Single Judge decided the aforesaid writ petitions by common order dated 07.11.2006. The learned Counsel Mr. Shishodia submitted that against the common order dated 07.11.2006 delivered in S.B. Civil Writ Petition No. 1067/2005, the appeal has been filed, but the same has yet not been admitted and the matter is lying in defect.

5. The controversy involved in this group of petitions is in connection with the notification issued by the State Government dated 05.10.1996 which is published in gazette on 15.10.1996, by which the premises occupied by the appellants as tenants has been exempted from the operation of Rent Act. It is aforesaid

notification of exemption, which is challenged by the present appellants by way of filing aforesaid writ petitions before the learned Single Judge. The present appellants are tenants of premises belonging to the Pooran Dasji Ki Bagichi Trust (hereinafter referred to as the Trust). The Trust has filed various eviction suits against each of the present appellants. So far as appellant Madan Lal is concerned, the eviction suit is numbered as 216/1996. So far as appellant Ram Lal is concerned, the eviction suit is numbered as 195/1997 and so far as appellant Devi Lal is concerned, the eviction suit is numbered as 205/1997.

6. It is pointed out that the Trust has filed the aforesaid suits for getting the decree for possession as the Trust wanted to have the said premises back from the tenants in order to expand the trust activities and for bonafide use and occupation. The aforesaid suits have been filed as regular suits for recovery of possession after terminating the tenancy as required by the Transfer of Property Act. Even though the said suits are pending since long, after considerable time, the aforesaid writ petitions were filed before the learned Single Judge by the respective defendants (tenants).

7. The controversy involved in the present appeals is whether the State Government was justified in granting benefit of exemption by which the premises in question is exempted from the operation of the Rent Act.

8. As stated earlier, the notification of exemption was issued on 5.10.1996 which was gazetted on 15.10.1996. As per the provisions of Rajasthan Premises (Control of Rent and Eviction) Act, 1950, certain premises are permitted to be exempted from the operation of the Act. As per the provisions of Section 2(3) of the Act, the State Government if it is satisfied that it is necessary or expedient so to do in public interest may, by notification in the official Gazette, exempt from all or any of the provisions of this Act any premises owned by any educational, religious or charitable institution the whole of the income derived from which is utilized for the purpose of the institution.

9. The respondent - Landlord Trust, after getting exemption in view of the notification as referred to above has instituted the aforesaid suits forgetting the decree for eviction. In all the aforesaid suits, the appellants - tenants have appeared and have filed written statement. The evidence of the parties is already recorded and the Court is informed that the matter are fixed for final arguments.

10. By filing the aforesaid writ petitions, the respective appellants contended that the notification issued by the State Government is not in public interest and that the Government issued the notification without holding proper enquiry as to whether the exemption is required to be granted in public interest.

11. The learned Single Judge negatived the said contention and came to the conclusion that since the landlord is a religious charitable trust and that since rented income is utilized for charitable purpose of the Trust, it cannot be said that the exemption granted by the State Government is not in accordance with the provisions of the Act. After considering the provisions of Section 2(3) of the

Act, the learned Single Judge found that the notification has been issued in public interest as the State Government was satisfied about the activities of the Trust. The learned Single Judge also found that the State Government has made enquiry in this regard. The learned Single Judge also found that once the notification is issued then there is presumption that the State government has enquired into the necessity and expediency unless the same is rebutted by other side. The learned Single Judge also found that the appellants have failed to point out that the income realized by the Trust is not being used for charitable religious purpose. Considering the aforesaid aspect, the learned Single Judge dismissed all the writ petitions. It is the aforesaid order of the learned Single Judge which is impugned in all these appeals at the instance of the original petitioners , who are the tenants of the said premises.

12. We have heard learned Counsel Mr. Shishodia appearing for the appellants in all these appeals and Mr. Joshi appearing for the Trust. Both the learned advocates have submitted their arguments finally on merits of the issue.

13. Mr. Shishodia who is appearing for the appellants accepted that the premises in question belongs to the Public Trust. However, Mr. Shishodia submitted that before issuance of notification, the State Government was required to make proper enquiry to find out whether exemption is required to be granted to the premises. Mr. Shishodia further submitted that simply because income derived by the Trust is used for the charitable purpose, that by itself is no ground for granting exemption; but while granting exemption, the Government is required to consider whether such exemption is required to be given in public interest. It is submitted by Mr. Shishodia that there is nothing to suggest that in public interest, such exemption is required to be granted to the premises in question and therefore, the impugned notification is required to be struck down as it cannot be said that the same is issued in public interest.

14. Learned Counsel Mr. Joshi on the other hand submitted that before issuance of notification, the Collector had entrusted the enquiry to the Tehsildar and the said Tehsildar after considering the record of the Trust in detail and after considering the objects of the Trust submitted his report to the Collector and going through the said report, the Collector formed his opinion that it is in public interest to grant such exemption as it was found that the income received by the Trust by way of rent or from any other source is utilized only for the purpose of the institution. Ultimately, after considering the aforesaid material and report of the Tehsildar, the State Government issued the notification granting exemption. The aforesaid notification is finding place at page 26 in the compilation and as per the language of the said notification, the exemption is granted in public interest.

15. After hearing learned Counsel for the parties at length, we are not in a position to accept the. contentions raised by Mr. Shishodia. The following factual aspects as such are not in dispute:

i) The premises in question belongs to the Public Trust.

ii) The income received by the Trust by way of rent as well as from other sources are also utilized for charitable purposes.

iii) Before granting exemption, the enquiry was entrusted to the Tehsildar of the area, where the Trust property is located.

iv) The said Tehsildar submitted his report after making enquiry about the activities of the Trust.

v) After receiving the said report, the Collector formed an opinion about granting of exemption and ultimately on the basis of same, the impugned notification has been issued.

16. It is required to be noted that even in the affidavit in reply filed by the State Government before the learned Single Judge, the Government has specifically stated that in public interest, the exemption is granted to the Trust. Mr. Joshi has pointed out that the Trust requires the premises for the purpose of construction and for expanding its other religious activities. On the basis of material available on record, the State Government has arrived at subjective satisfaction that exemption is required to be granted exempting the premises in question from the operation of the Rent Act.

17. Mr. Shishodia has relied on the decision of Hon''ble Apex Court in the case of State of Madhya Pradesh v. Kanhaiya Lal and Ors. AIR 1969 C J 625. In the aforesaid case, it has been held by the Hon''ble Supreme Court that before issuance of notification exempting a building from the provisions of Madhya Pradesh Accommodation Control Act, it must be satisfied that ground of exemption was germane to the policy of the Act. Any institution covered by Section 3(2) of the Act has to allege why it has become necessary for it to apply for exemption. It is further clarified that where the State Government does not apply its mind which it is required to do under the Act, the notification is not valid. In the aforesaid case, in para 6, it has been held as under:

6. Before we can hold in favour of the State Government, we must be satisfied that the ground of exemption was germane to the policy of the Act. In this case there is no affidavit by any officer who had anything to do with the order granting exemption. The returns filed on behalf of the State Government do not throw any light on this question. It would appear that in granting the exemption the State applied merely a rule of thumb and issued the notification on the basis of assertion by the trust that the entire rental income from the property was being applied to meet the expenses of the trust. Such a statement only allows an institution to apply for exemption u/s 3(2). By itself it is not enough. Any institution covered by Section 3(2) had to allege why it had become necessary for it to apply for exemption. It was not the case of the trust that they wanted to evict the tenants because they wanted the whole of the accommodation itself nor was it their plea that the income accruing to them was very low compared to

prevailing rates of rent and that it was wholly inadequate for meeting the expenses of the trust. If grounds like these or other relevant grounds had been alleged it would have been open to the State Government to consider the same and pass an order therein. In our view, State Government did not apply its mind which it was required to do under the Act before issuing a notification and the return does not disclose any ground which was germane to the purpose of the Act to support the claim for exemption.

18. So far as the facts of the present case is concerned, as pointed out earlier, before granting exemption, the enquiry was held. After getting the report from the Tehsildar, ultimately, the Collector formed an opinion for granting exemption and subsequently the notification was issued granting exemption. Therefore, the facts of the present case are different from the facts of the case in State of M.P. v. Kanhaiya Lal (supra).

19. During the course of hearing, Mr. Shishodia, to the query of the Court, also fairly conceded that it is not his argument that the notification is issued in malafide manner. It is also not his case that any of the tenants were subjected to demand of higher rent and on their refusal of such demand that the notification has been issued. It is submitted that the Trust has never demanded higher rent from any of the tenants at any point of time, but his argument is only limited to the extent of "public interest" and not beyond that. Mr. Shishodia also fairly submitted that no particulars of malafides have been given, though half-heartedly a ground has been taken in the petition about the same.

20. Considering the facts of the case, in our view, it cannot be said that the notification has been issued with any ulterior motive especially when it is the case of the Trust even in the suit that for expansion of the trust activities and other religious activities of the Trust, the premises is required. This Court cannot sit in appeal over the decision of State authority granting exemption nor this Court is expected to make rigorous enquiry to find out whether exemption should be granted or not especially when on the basis of report given by the Tehsildar, ultimately, the Collector formed an opinion that in the public Interest, the exemption Is required to be granted.

21. In view of the aforesaid factual background of the case, it cannot be said that the notification has been issued with some ulterior motive. It is not a case in which this Court would like to strike down the notification on the ground that such exemption is not in public interest. It is not in dispute that the Trust has filed the aforesaid suits for getting the decree for possession on the ground that the Trust wants to expand its activities and learned advocate Mr. Joshi has submitted that the Trust even in its exemption application and even at the time of enquiry has pointed out that for the purpose of expanding its existing activities, the Trust wants the premises back. Ultimately, after considering all the aspects of the matter, the notification has been issued.

22. Be that as it may, when the State Government in its wisdom after

considering the material has issued the exemption notification, this Court would not like to sit in appeal while dealing with the matter in extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

Even during the course of hearing, it was suggested to learned Counsel for the appellants whether he would like to take this point in pending civil suits, he submitted that his clients have instructed that they would like to pursue this point in these writ petitions.

23. We are of the opinion that in order to delay the pending suits, which are pending for more than 10 years, the writ petitions are filed challenging the impugned notification for which there is no basis as such. The learned Single Judge has also found that the writ petitions have been filed at the late stage when even the evidence in the respective suits is over and the matters were kept for final arguments. Considering the aforesaid aspect of the matter, we are not impressed by the submissions made by the learned Counsel for the appellants regarding absence of public interest element at the time of issuance of notification.

24. At the cost of repetition, we may mention that the exemption has not been granted on the basis of some extraneous grounds or reasons nor it suffers from any malafide nor Mr. Shishodia is in a position to give any particulars about the same. Under these circumstances, the exemption notification issued by the State Government in our view is not required to be interfered with as it cannot be said that there is no rationale behind granting such exemption especially when the Rent Act itself contemplates such exemption to the educational, religious or charitable institutions.

25. We are, therefore, of the opinion that the order of the learned Single Judge is not required to be interfered with by this Court in these special appeals. No other points were canvassed by Mr. Shishodia. We do not find any substance in these appeals and the same are accordingly dismissed. No order as to costs.

