
(1978) 05 AHC CK 0008
In the Allahabad High Court
Case No : Writ No. 490 of 1976

Matloob Ali

APPELLANT

Vs

The I Addl. Distt. and Sessions Judge and Others

RESPONDENT

Date of Decision : 19-05-1978

Acts Referred:

Income Tax Act, 1922 — Section 4(3)

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2), 6(1)

Citation : (1978) AWC 708 : (1979) RD 32

Hon'ble Judges : M.P. Mehrotra, J

Bench : Single Bench

Advocate : A.P. Tewari, for the Appellant; B.N.L. Katiyar, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Mehrotra, J.—This petition arises out of the proceedings under the U.P. Imposition of Ceiling on Land Holdings Act, 1960.

2. The Petitioner was issued notice u/s 10(2) of the said Act and he filed his objections before the Prescribed Authority. The objections were partly allowed and partly dismissed. Then the Petitioner went up in appeal to the lower appellate court and the said court also partly allowed the appeal. As a result of the order of the lower appellate court the surplus area was reduced from 8 bighas, 12 biswas and 10 biswansis to 2 bighas, 15 biswas and 10 biswansis

3. Now the Petitioner has come up in the instant petition and in support thereof I have heard Sri A.P. Tewari, learned Counsel for the Petitioner. In opposition, Sri B.N.L. Katiyar, learned standing Counsel for the State has made his submissions.

4. Two contentions were raised before me. Firstly it was contended that plot No. 189 which was alleged to be equivalent to plot No. 208 should have been exempted u/s 6(1)(f) of the said Act. The Prescribed Authority had rejected the said contention and had included it in the surplus land. In the lower appellate court, however, though the plea for exemption under the said provision was

rejected, it was held that as the said plot was a grove, therefore, the area should be reduced proportionately. Learned Counsel's contention is that the lower appellate court should have exempted the said plot under the aforesaid provisions of law. In my opinion this contention cannot be accepted. Section 6(1) (f) of the said Act lays down as under:

6. Exemption of certain land from the imposition of ceiling: (1) Notwithstanding anything contained in this Act land falling in any of the categories mentioned below shall not be taken into consideration for the purposes of determining the ceiling area applicable to and the surplus land of tenure-holder namely-

(a)....

(b)....

(c)....

(d)....

(e)....

(f) land held from before the first day of May, 1959, by or under a public religious or charitable waqf, trust, endowment, or institution the income from which is wholly utilized for religious or charitable purposes, and not being a waqf, trust or endowment of which the beneficiaries wholly or partly are settlers or members of his family or his descendants.

5. My attention has been invited to the registered waqf deed dated 10th June, 1924, a true copy whereof has been annexed with the petition and marked as Annexure "5", It is not disputed that the said waqf deed is partly for charitable purposes and partly for the benefit of descendants of the waqf. Counsel, however contended that in terms of the document the particular plot in dispute, namely, plot No. 189 was exclusively reserved for charity and, therefore his client is entitled to the benefit of exemption under the aforesaid provision.

6. The first question is whether the waqf in question can be said to be a public or religious charitable waqf. In Trustees of Gordhandas Govindram Family Charity Trust Vs. Commissioner of Income Tax, Bombay, , the Supreme Court laid down:

Now, let us turn to the other question, viz., whether the trust in question can be considered as a trust created for public purpose of a charitable or religious nature. As seen earlier, the trust in question was created primarily for the benefit of the members of the family of Gordhandas Govindram Seksaria. That is clear from the title given to the trust as well as from the various provisions to which we have made reference earlier. Therefore, it is not possible to hold that the trust in question is a trust for any public purpose. It is dearly a private trust. The character of the trust in question came to be considered by the Bombay High Court in Trustees of Gordhandas Govindram Family Charity Trust v. Commissioner of Income Tax, u/s 4(3)(i) of the Indian Income Tax Act. After examining the various provisions, the High Court opined that it was not a trust for charitable

purpose within the meaning of the Indian Income Tax Act, 1922. It was held that the primary purpose of the settlor was to benefit the members of his family and remotely and indirectly to benefit the general public. We agree with that conclusion. The decision in the above case came up for consideration by this Court in Trustees of the Charity Fund v. Commissioner of Income Tax. This Court did not differ from the view taken by the High Court, but distinguished the same.

7. The lower appellate court has observed and I agree with the said observation that most of the property was to be utilized for the benefit of the settlor or the members of his family and only a very small part of the property was to be utilized for charitable purposes. In this view of the matter, the aforesaid Supreme Court decision is clearly applicable to the instant waqf and it cannot be considered to be a public or religious charitable waqf. Moreover it will be seen that there are two parts in Clause (f) of Section 6(1) of the said Act. Under the first part the requirement is that land should have been held from before the first day of May, 1959 by or under a public religious or charitable waqf, trust, endowment or institution the income from which is wholly utilized for religious or charitable purposes, and the other part which lays down that it should not be a waqf, trust or endowment, of which the beneficiaries wholly or partly are settlors or members of his family or his descendants. Even if a waqf or trust or endowment is covered by the first part, still, land held by it will not be exempt in case it is covered by the second part also. In other words, if there is a waqf where the beneficiaries are even partly the settlors or members of his family or his descendants, then the land held by such a waqf cannot be exempt even though such land itself may be held exclusively for the purpose of charity. It has to be emphasised that in the second part of Clause (f) of Section 6(1), the criterion laid down is not whether the particular piece of land is itself dedicated for charity or not. The criterion in the second part is that the beneficiary of the waqf should not even partly be the settlor or the member of his family or his descendants. It is obvious that the second part in this respect is in vivid contrast to the first part where the nature and quality of the land have been emphasised as providing the criterion. If there be a waqf where the beneficiaries are even partly the settlors or members of his family or his descendants, then the first part of Section 6(1)(f) will not be attracted even though in the waqf deed a particular piece of land is wholly dedicated for the purpose of charity.

8. The second contention which was raised by the learned Counsel is that in the Prescribed Authority's order in the body it is mentioned that 3 bighas and 9 biswas of land were surplus but in the operative part of its order it was mentioned that 8 bighas, 12 biswas and 10 biswansis of land were surplus. This matter has not been discussed in the order of the lower appellate court and it is not clear whether it was raised before the said court. If there be any clerical mistake in the two orders of the authorities below, then it will be open to them to correct such clerical error. However, it has to be emphasised that only clerical errors due to inadvertence can be corrected and not the errors which require discussion and debate or where the matter has to be gone into the merits.

9. In the result, with the aforesaid clarification that it will be open to the authorities below to set right the clerical error, if any, in their orders, I hereby dismiss the petition. There will be no order as to costs.