(1977) 08 GUJ CK 0009

In the Gujarat High Court

Patel Parshottamdas Chheldas and Others APPELLANT

Vs

State of Gujarat and Another RESPONDENT

Date of Decision : 25-08-1977

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 88B, 88B(1)(b)

Citation : (1978) 19 GLR 464

Hon'ble Judges : B.K. Mehta, J

Bench : Single Bench

Judgement

B.K. Mehta, J.—The petitioners, who are the trustees of a public trust known as PATEL LALJI LAXMIDAS SADAVRAT SANSTHA, have challenged the order of the Gujarat Revenue Tribunal of April 12,1973, confirming the order of the Deputy Collector, Patan, holding that the aforesaid trust was not entitled to exemption u/s 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Tenancy Act"). The Charity Commissioner, Gujarat, has by his order of April 27, 1962, sanctioned the scheme while permitting the amalgamation of the two trusts viz. Patel Lalji Laxmidas Nava Ramji Mandir Public Trust and Swami Muktanand Sadavrat Public Trust. The objects of the said trust were, according to Clause 2 of the said scheme, (1) maintenance and upkeep of the temple, (2) performance of Dev Seva Puja of the temple, (3) Sadavrat, (4) education and medical relief, and (5) general acts of public ultility. Clauses 5 of the said scheme enjoins the trustees to apply the balance of the income after defraying all charges, costs, expenses, rates and taxes to the various objects in the proportion specified in Sub-clause (b) thereof. The trustees were under obligation to apply 15% of the balance income towards education and medical relief each; 25% to Dev Seva Puja and Sadavrat each, and 200/, to general acts of public utility. It is in this context of the scheme that the Deputy Collector, Patan, by his order of October, 16, 1972 refused to grant certificate u/s 88-B of the Tenancy Act. The Gujarat Revenue Tribunal also in revision preferred by the petitioner-trustees confirmed the order of the Deputy Collector, Patan as the trust was a composite trust.

2. Mr. Patel, learned Advocate, appearing for the petitioner-trustees assailed the order of the Gujarat Revenue Tribunal by urging that the Tribunal was clearly in error in refusing the certificate u/s 88-B of the Tenancy Act as the learned Member of the Tribunal was impressed by a consideration which was entirely erroneous. The learned Member of the Tribunal was of the opinion that since u/s 88-B Of the Tenancy Act, which was introduced as a result of the Gujarat Devasthan Inams Abolition Act, 1969, the certificate issued under the said section to a religions trust stood revoked arid the lands of such trust being Devasthan lands, the provisions of the Gujarat Devasthan Inams Abolition Act, 1969 would apply. In submission of Mr. Patel, this is entirely an extraneous consideration which has prevailed with the learned Member of the Tribunal; He also criticised the view of the learned Member of the Tribunal that the trust in question being a composite trust was not entitled to the certificate u/s 88-B of the Tenancy Act. The only relevant considerations, according to Mr. Patel, for granting such certificate are those which are prescribed u/s 88-B. The prescribed revaluate considerations are-that trust applying for certificate u/s 88-B should be for educational purpose or ''for a hospital, Panjrapole or Gaushala and it must be a public trust registered under the Bombay Public Trust Act 1950, and whose entire income out of the lands is appropriated for the purpose of Such trust. Since the trust in question before me is a public trust registered under the Bombay Public Trust Act, 1950, inter alia, with the object of education as well as medical relief, it satisfies all the relevant considerations prescribed u/s 88-B and, therefore, entitled to the Certificate. In so far as the Tribunal was influenced by extraneous considerations its order confirming the order of the Deputy Collector, Patan is vitiated and must be quashed and set aside.

3.1 am afraid, I cannot agree with this broad submission of Mr. Patel for the petitioners. The legislative intent as evinced in Section 88-B is to exempt lands of certain institutions, like university or public trusts with certain objects specified in the section, or where the lands are assigned or donated for the purpose of rendering the specified community devices. There are further conditions imposed by the proviso in case of & public trust. Since I am concerned with a question of a public trust, the provision contained in-sec. 88-B-(1)(b) together with the proviso would apply. The material part of Section 88-B which is relevant for the purpose of this petition reads as under:

88-B(1) Nothing in the foregoing provisions, except Sections 3, 4B, 8, 9, 9A, 9B, 9C. 10, 10A, 11, 13 and 27 and the provisions of Chapters VI and VIII m 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-

(a) x x x x x (b) to lands which are the property of a trust for an educational purpose a hospital, Panjrapole or Gaushala:

(c) x x x x x x Provided it as-

(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 purposes of such trust.

The section, therefore, enjoins that before a trust can claim exemption u/s 88-B, it must be a public trust either for an educational purpose of for a hospital, Panjrapole or Gaushala registered under the Bombay Public Trusts Act, 1950, and its entire income out of the lands is appropriated for the purposes of such trust. There would be no difficulty in applying the section to a public trust registered under the Bombay Public Trusts Act with any one of the objects specified in Clause (b) which may be broadly described as an exempted object. The difficulty arises only when in i given case a trust has more than one object and these objected include certain exempted objects and non-exempted objects. In such cases, would it be sufficient for purposes of claiming exemption u/s 88-B that a part of the income is applied to any one of the exempted objects? The interpretation which has been canvassed by Mr. Patel proceeds of this footing that if the part of the income is applied to one of the exempted objects, it would be sufficient for qualifying that trust for exemption under the said section. This interpretation of Mr. Patel, if accepted, I am afraid, would defeat the legislative intent of reiterating the exemption from the provisions of the Tenancy Act to certain kinds of trusts with the definite objects specified in the section. The interpretation canvassed by Mr. Patel overlooks the condition which has been prescribed m Clause (ii) of the proviso, which enjoins that the entire income out of the lands is appropriated for the purposes of such trust, if under interpretation canvassed by Mr. Patel is accepted, it may enable the settlers to direct that art insignificant part of the income be applied to an exempted object and a substantial income be diverted to non-exempted object, itid then claim exemption from the provisions of the Tenancy Act. The contention of Mr. Patel in effect is that it would be sufficient if the entire income arising out of the lands of the trust is appropriated for the purposes directed in the settlement and that the income is not used for any other purpose or object not permitted under the settlement. This interpretation as stated above, would not only be self-deferring but does not give full effect to Clause (ii) of the proviso. In that view of the matter, therefore, in the present case before, me sub Clause (2) of Clause 5 of the Scheme enjoins that only 15% of the net income of the trust is to be utilised for the exempted object viz. education. Mr. Patel made to attempt to persuade me that the medical relief being the object of the trust is also one of the exempted objects u/s 88-B. I do not think that such a contention is permissible because the exempted object, acceding to Clause (b) of Section 88-B(1) is hospital and not medical relief. The object of medical relief and the purpose of hospital are two different objects. Even assuming what Mr. Patel says to be a possible view of the matter, even then only 30% of the income is to be utilised for the so called exempted objects under the said section. In that state of the scheme, seeks the entire income of the lands is not to be appropriated for the exempted objects, I do not think that there are any reasons for me to interfere with the order of the Revenue Tribunal.

The result is that this petition fails and is dismissed. Rule is discharged with no order as to costs.

