
(1991) 11 BOM CK 0014

In the Bombay High Court

Case No : Writ Petition No. 3464 of 1980

Poulad Deochand Patil

APPELLANT

Vs

Samasta Aher Nhavi Panch Trust and Another

RESPONDENT

Date of Decision : 27-11-1991

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 88B(2)

Citation : (1992) 2 BomCR 583

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : R.V. Desai, for the Appellant; M.V. Suli, for the Respondent

Judgement

D.R. Dhanuka, J.—By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner-tenant has sought a writ of certiorari or a writ in the nature of certiorari calling for the record and proceedings of the case, for quashing and setting aside of certificate dated 4th December, 1959 issued by the District Deputy Collector, Nandurbar, District Dhule (respondent No. 2 herein) in respect of the land in question bearing Survey No. 102 of Village Chinode, Taluka Taloda, District Dhule, being the certificate of exemption granted by the 2nd respondent-District Deputy Collector u/s 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948, hereinafter referred to as "the Tenancy Act".

2. The crucial facts required to be stated for disposal of this petition are as under :-

(a) The petitioner claims to be the tenant of the land in question described in paragraph 1 of the petition ever since 1948. The land in question is described in the petition as land bearing Survey No. 102 admeasuring 4 hectares and 6 Ares (10 acres and 1 guntha) (PK-O-15) assessed at Rs. 13-2-0 situate at Village Chinode, Taluka Taloda, District Dhule.

(b) On 28th August, 1953, a Trust known as Shri Samasta Aher Nhavi Panch trust (respondent No. 1 herein) was duly registered as a Public Trust under the

Bombay Public Trusts Act, 1950. The 1st respondent Trust claims to be a tenant engaged in educational activities.

(c) On 4th December, 1959, the 2nd respondent-District Deputy Collector issued a certificate in favour of the 1st respondent- Trust u/s 88-B of the Tenancy Act. A copy of the said certificate is Exhibit "A" to the petition. Section 88-B(1) of the Tenancy Act provides that the lands which are the property of a Trust for an educational purpose and other purpose specified therein are exempted from certain provisions of the Tenancy Act. The conditions of such exemption prescribed by the Tenancy Act are as under :-

(i) Such Trust is or is deemed to be registered 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."

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

"88B. (2) 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."

(d) It is case of the 1st respondent-Trust that the 1st respondent has always satisfied both prescribed conditions of exemption. On the basis of the said averment and after receiving the said certificate of exemption u/s 88-B(2) of the Tenancy Act, the respondent No. 1 has filed Regular Civil Suit No. 28 of 1979 in the Court of the Civil Judge, Junior Division, Taloda, for eviction of the petitioner-tenant from the said land. The petitioner contends that the petition land belonging to the 1st respondent-Trust is not exempted from the relevant provisions of the Tenancy Act, as according to the petitioner the above referred two conditions are not satisfied by the 1st respondent-Trust. The petitioner also contends that the impugned certificate dated 4th December 1959 cannot be relied upon by the respondent No. 1 in the said Civil Suit and the same deserves to be quashed, as no show cause notice was issued by the District Deputy Collector to the petitioner-tenant before issuing the said certificate and the principles of natural justice were thus violated by the said authority. In the light of these contentions, the petitioner has filed this writ petition. The petition was filed in September, 1980. The petition was admitted and all further proceeding in Regular Civil Suit No. 28 of 1979 were stayed by this Court. It is unfortunate that the petition has remained pending for so many years.

3. The petitioner-tenant has averred in the petition that the petitioner had no knowledge about the issue of the said certificate until the petitioner was served with the proceedings of the said Regular Civil Suit No. 28 of 1979. Shri Vanji Dagdu Nhavi, the trustee of the 1st respondent -Trust, has filed an affidavit in reply and has denied the correctness of the said allegation. The respondent No. 1 has relied on proceeding in respect of the same very land commenced u/s 32-G

of the Tenancy Act culminating in the order dated 21st December, 1972 passed by the Tahsildar dropping the said proceedings for fixation of purchase price relying on the above referred exemption certificate dated 4th December, 1959. The respondent No. 1 has vigorously and rightly opposed this petition on the ground of delay. If the land is lawfully exempted from the relevant provisions of the Tenancy Act, u/s 88-B thereof, Section 32-G of the Act is inapplicable in addition to non-applicability of several other section of the Act.

4. In the case of *Shrimant Jagdeorao Anandrao Pawar v. Kisan Namdeo Pawar & others* 1979 M.L.J. 687 , Masodkar, J., held that an inquiry u/s 88(2) of the Tenancy Act could not be treated as if a judicial trial. By this judgment, it was held by our High Court that tenants need not be heard by the Collector during the course of such inquiry. Masodkar, J., relied upon the judgment of the Hon''ble Supreme Court in the case of *Maneksha Ardeshir Irani and Another Vs. Manekji Edulji Mistry and Others*, in which it was observed by A.N. Ray, J., speaking for the Bench of the Hon''ble Supreme Court that the inquiry u/s 88-B of the Act was between the Collector and the Trust and the conclusive evidence clause in sub-section (2) of section 88B of the Tenancy Act was in the nature of rule of evidence.

5. In *Keraba Dattu Borachate and Others Vs. Sheshashai and Vishnu Trust*, the Hon''ble Division Bench of our Court consisting of & Saldanha, JJ., has taken a different view. The Hon''ble Division Bench has overruled the judgment of Masodkar J. in the above referred case and has held that notice to tenant was necessary before granting of certificate.

6. In *Smt. Maneka Gandhi v. Union of India and another*, A.I.R 1978 S.C. 579, Bhagwati, J., speaking for the Bench of the Hon''ble Supreme Court, held that in certain situations, ex post facto hearing could be a substitute for grant of prior hearing and in a given case-as for example - the case of impounding the passport in an emergent situation. Ex-parte order can be recalled if the authority concerned is satisfied after granting hearing to the party affected that the order passed was erroneous and the relief to be granted can be moulded according to circumstances of the case. It appears to me that in a given situation the mandate of natural justice will be more than satisfied if the party affected is granted a reasonable time of being heard even after the order is passed and the authority concerned applies its mind to the question as to whether the order already passed should be revoked or recalled or not. This is well recognised method of complying with the principles of nature justice though not always satisfactory.

7. It is not condition of exemption available to a public trust u/s 88B of the Tenancy Act that it must necessarily possess the certificate issued by the Collector under sub-section (2) of section 88-B. The statute provides that if the prescribed conditions are objectively satisfied by the trust, the land in question shall be treated as exempted from prescribed provisions of the Act notwithstanding the fact that the holder of the land may not possess the

certificate of exemption. If the trust produces the certificate issued under sub-section (2) of section 88-B of the Tenancy Act before the Civil Court or any other authority, production of such certificate by itself is liable to be considered as conclusive evidence of the fact that the trust has duly satisfied the prescribed conditions of exemption. If no such certificate is produced by the plaintiff-trust in the civil suit, the Civil Court is not precluded in law from considering the question as to whether the trust satisfied the requisite conditions or not for exemption. In such a case, the trust cannot avail of the presumptive rule of evidence.

8. There is considerable force in the submission of Shri Sali, the learned Counsel for the respondent No. 1- landlord, that the petitioner-tenant had knowledge of the said certificate at least since the year 1972 and the petitioner is guilty of laches in filing this petition. However it is not possible to dismiss the petition on the ground of delay as he petitioner has impugned the said certificate on ground of non-compliance with the principles of natural justice. The prescribed authority is not at fault, as the view prevailing so far was that no hearing need be given to the tenants affected in an inquiry to be held by the Collector under sub-section (2) of section 88-B of the Tenancy Act. The Divisions Bench of our Court has interpreted the relevant provisions and the relevant judgment of the Hon"ble Supreme Court differently and has come to the conclusion that the tenants affected were and are entitled to be heard by the authority on the question as to whether the trust satisfied the conditions of eligibility or not.

9. After taking an overall view of the matter and in view of the peculiar facts and circumstances of this case, including the fact that impugned certificate was issued in the year 1959, I pass the following order:-

(a) The Sub-Divisional Officer, Nandurbar Division, Nandurbar, District Dhule, shall serve the notice on the petitioner-tenant and the respondent No. 1- landlord, hear both the parties and allow them to lead the necessary evidence and then decide whether the respondent No. 1 Trust has duly complied with the prescribed conditions of exemption. The said authority shall pass a speaking order and shall decide either to confirm the certificate dated 4th December, 1959 which is already granted or to revoke the said certificate, if the said authority comes to the conclusion that the respondent No. 1- Trust has not complied with the prescribed conditions of exemption. The Sub-Divisional Officer, Nandurbar Division, shall endeavour to complete the proceedings and pass a speaking order latest by 31st March, 1992, as it is a very old matter.

(b) Interim stay of proceedings in Regular Civil Suit No. 28 of 1979 is vacated with immediate effect. The learned Civil Judge, Junior, Division, Taloda, District, Dhule, shall fix the hearing of the suit on a date after 31st March, 1992 and shall proceed with the hearing of the said suit thereafter expeditiously and in accordance with law. The learned Civil Judge shall endeavour to dispose of the said suit latest by 31st December, 1992. If the certificate of exemption already granted on 4th December, 1959 is confirmed by the Sub-Divisional Officer, Nandurbar Division, Nandurbar, District Dhule, it would be treated by the Civil

Court as conclusive evidence of the compliance of the conditions in accordance with the mandate of sub-section (2) of section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948. If the said certificate is revoked, by the Sub-Divisional Officer, the Civil Court shall permit the respondent No. 1-plaintiff to adduce evidence and prove to the satisfaction of the Court that the respondent No. 1 is a trust falling within the category of trusts specified in section 88-B(1) of the said Act i.e. (1) that the said trust is a registered trust under the Bombay Public Trusts Act, 1950 and (2) that the entire income of the suit land is appropriated for the purpose of such trust.

(c) both parties shall be at liberty to adopt further proceedings in accordance with law depending upon the decision of the Sub-Divisional Officer, Nandurbar Division, Nandurbar, District Dhule, on the question referred to in direction (a) above if so advised, but the hearing of Regular Civil Suit shall not be stayed and the suit must necessarily be disposed of, as directed, by 31st December, 1992.

(d) Rule is accordingly made partly absolute in terms aforesaid. No order as to costs.