(2004) 06 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 3827 of 1984

Ramagiri Gurudattagiri Gosavi and Another — APPELLANT

Vs

Aba Alli Mulani since deceased by his legal heirs Gapur Aba Mulani and Others — RESPONDENT

Date of Decision : 08-06-2004

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 32G, 88B, 88B(1)

Citation : (2005) 1 ALLMR 429 : (2005) 2 BomCR 400 : (2005) 1 MhLj 39

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : S.V. Sadavarte, for the Appellant; R.V. More, for Respondent No. 1a and P.D. Dalvi, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, J.—This Writ Petition under Article 227 of the Constitution of India takes exception to the Judgment and Order passed by the Maharashtra Revenue Tribunal, Pune Camp at Kolhapur dated December 23, 1983 in Revision No. MRT-SS-406/1976 (High Court Remand) : Camp-Kolhapur. It is not necessary to reproduce all the events that have resulted in filing of the present petition. Suffice it to observe that the petitioners claim to be a Public Trust duly registered under the provisions of the Bombay Public Trusts Act, 1950. The petitioners claim to be the owners in respect of land bearing R. S. No. 1/1 admeasuring 5 acres 11 Gunthas. It is not in dispute that the respondents were cultivating the said land as tenant, since prior to the tillers day. It is in that backdrop, respondents filed application u/s 32-G of the Act before the appropriate Authority for fixation of purchase price of the suit land, being deemed purchasers. The said process ended in favour of the respondents till the Revisional Authority dismissed the Revision vide order dated 2nd January, 1981. Against that decision, petitioners earned Writ Petition before this Court being Writ Petition No. 2056 of 1981. While the proceedings u/s 32-G of the Act were pending, petitioners had also filed application sometime in 1974, purported to be u/s 88-B of the Act. The said application was, however, rejected by the Authority holding that the petitioners did not qualify the requirements of Section 88-B of the Act. Against that decision, petitioners had carried Revision before the Tribunal, which obviously was not maintainable in view of the reported decision of this Court in the case of Jagdeorao Anandrao Pawar Vs. Kisan Namdeo Pawar and Another, .

2. Be that as it may, the Revisional Authority was pleased to allow the said Revision Application filed by the petitioners. Against that decision, respondents carried Writ Petition before this Court being Writ Petition No. 788 of 1979. Both the Writ Petitions pending before this Court eventually came to be disposed of by common Judgment and Order dated August 3, 1982. By that decision, the matter stood remanded to the file of the Revisional Authority for examining the same, in accordance with law. In that sense, the matter which was initiated on the basis of the application filed by the respondents for fixation of purchase price u/s 32-G of the Act as well as at the instance of the petitioners pursuant to application u/s 88-B of the Act, was left open to be decided by the Tribunal. The Tribunal, by the impugned Judgment and Order, has accepted the stand of the respondents and has found that the petitioners were not entitled for the benefit of provisions of Section 88-B of the Act because it did not fulfil the requirement of the nature of Trust as well as the factum that the income derived from the suit lands was appropriated for the purposes of the Trust. On that reasoning, the Tribunal held that the petitioners were not entitled for protection of Section 88-B of the Act and consequently proceeded to hold that the respondents had become deemed purchaser by virtue of deeming provision on the tillers day and therefore, proceeded to affirm the purchase price determined by the appropriate authority. This decision is subject matter of challenge in the present petition.

3. The first contention canvassed on behalf of the petitioners is that the question as to whether the petitioner Trust is a religious worship trust or not, has been incorrectly decided by the Tribunal. It is also contended that the finding reached by the Tribunal that the income derived from the suit lands was not appropriated for the purpose of the Trust, is also unsustainable. It was also contended that the question as to whether the Certificate u/s 88-B of the Act could be issued in favour of the petitioner Trust, could not have been matter in issue before the Revisional Authority as that issue is not open for examination u/s 76 of the Act, as has been expounded in the decision referred to above. On the above arguments, learned Counsel contends that the Judgment under Appeal cannot be sustained and the matter deserves to be remanded for further enquiry, if required.

4. On the other hand, Counsel for the respondents has adopted the reasons recorded by the Tribunal. Besides, learned Counsel contends that Section 88-B of the Act, would apply only if the petitioner Trust was to establish that it was a Trust for public religious worship, and not otherwise. He further submits that in

any case, there is no infirmity in the finding recorded by the Tribunal even with regard to the second requirement that the entire income from the suit lands is appropriated for the purposes of the petitioner Trust. He therefore submits that there is no merit in this petition. He further submits that the reported decision relied on behalf of the petitioners is inapposite in the fact situation of the present case, inasmuch as the original authority had rejected the application purported to be u/s 88-B of the Act and it is the petitioners who had carried the matter in Revision which was not maintainable. In any case, the matter having been remanded by this Court and the remand order having become final, as it was not challenged, it is not open to the petitioners to advance the argument of lack of jurisdiction of the Tribunal. On the above arguments, learned Counsel submits that the petition deserves to be dismissed.

5. Having considered the rival submissions and having perused the record with the assistance of the Counsel appearing for the parties, I shall first deal with the question of jurisdiction of the Tribunal to examine the relevant issues. To my mind, no fault can be found with the Tribunal as it has proceeded to decide the matter in terms of the remand order of this Court which was allowed to become final. It is too late in the day for the petitioners to contend that the Tribunal had no jurisdiction especially having participated in the remand proceedings without any demur. I find substance in the argument of the respondent that reliance placed on the above-named reported case is inapposite as the petitioners had themselves invoked the remedy u/s 76 of the Act to question the order of the first authority which had rejected their application for exemption u/s 88-B of the Act. And if the petitioners contention was to be accepted, it was their Revision Application which ought to be dismissed at the threshold which will put the petitioners in worst situation as it will not be open to them to pursue the argument in the context of claim u/s 88-B of the Act.

6. Be that as it may, it is appropriate to first advert to the requirements u/s 88-B of the Act. To get benefit of Section 88-B, it is imperative for the petitioners to establish the twin requirement that the petitioner Trust was a Trust for public religious worship as is required by Section 88-B(l)(b); and that the entire income of the suit lands derives by the petitioner Trust was appropriated for the purposes of such Trust. In the present case, the Court below has found that none of the aforesaid requirements are fulfilled by the petitioner Trust. Indeed, whether the petitioner Trust is for public religious worship or not, is a matter which can be straightaway answered by adverting to the registration certificate, which was pressed into service by the petitioners, issued by the competent authority under the provisions of the Public Trust Act as the description of the Trust mentioned therein is unquestionable. The petitioner Trust was registered sometime in 1952 and the Certificate clearly mentions the object of the Trust as "spiritual and religious teaching". Going by the said object as recorded by the appropriate authority, it is obvious that the petitioner Trust is created for propagating spiritual and religious "teaching" and is not a trust for public religious "worship" as such. There is marked difference between the expression

"worship" and "teaching". The dictionary meaning of "Worship" can be deduced from Black''s Law Dictionary, which states "any form of religious service showing reverence for Divine Being, or exhortation to obedience to or following of the mandates of such Being...." The term "public worship" is also expounded to mean the worship of God, conducted and observed under public authority; or it may mean worship in an open or public place, without privacy or concealment; or it may mean the performance of religious exercises, under a provision for an equal right in the whole public to participate in its benefits; or it may be used in contradistinction to worship in the family or the closet. It is further stated that a Church absolutely belonging to the public, and in which all persons without restriction have equal rights, such as the public enjoy in highways or public landings, is certainly a very rare institution. It will be useful to advert to the same dictionary to expound the meaning of expression "teaching". Expression "teach" has been stated to mean "to impart knowledge by means of lessons; to give instructions in; communicating knowledge; introducing into or impressing on the mind as truth or information, and may be done as well through written communications, personal direction, through a public press, or through any means by which information may be disseminated, or it may be done by the adoption of sentiment expressed or arguments made by others which are distributed to others for their adoption and guidance". The meaning of word "teaching" is spelt out in the Concise Oxford Dictionary to mean "1. the profession of a teacher. 2. (often in pi.) what is taught; a doctrine; teaching hospital a hospital where medical students are taught; teaching machine; any of various devices for giving instruction according to a programme measuring pupil''s responses."

7. As the Certificate issued by the appropriate Authority under the provisions of the Bombay Public Trust Act, spells out the object of the petitioner Trust as spiritual and religious "teaching" only, obviously, it cannot be assumed to be a trust for public religious worship as such. In any case, the finding of fact reached by the Authorities below after analysing the evidence on record is that no worship activity was carried on in the premises of the petitioner Trust. That finding of fact would bind this Court. So understood, it necessarily follows that the first requirement of Section 88-B(l)(b) is not fulfilled by the petitioner Trust. Besides, the Authorities below have also found, as of fact, that the petitioner had not submitted any returns to the appropriate authority under the provisions of the Bombay Public Trust Act with regard to the appropriation of the income derived from the suit lands, which belonged to the Trust. In other words, no reliable evidence has been produced by the petitioner Trust to establish the fact that the income, much less the entire income derived from the suit lands was appropriated by the petitioners for the purposes of the Trust. In absence of that evidence, the issue has been, to my mind, rightly answered against the petitioners by the Authorities below. In that sense, the petitioner Trust has not fulfilled either of the twin requirements u/s 88(1)(b) of the Act, so as to get benefit of the said provision.

8. As Section 88-B of the Act has no application to the fact situation of the present case, to my mind, no fault can be found with the impugned decision of the Tribunal, which has affirmed the purchase price determined by the appropriate authority towards purchase of the suit lands by the respondent who is a deemed purchaser on account of the mandatory provisions of the Act. The Counsel appearing for the petitioners did not address this Court on the appropriateness of the purchase price determined by the Authorities below. Accordingly, even that conclusion reached by the Tribunal will have to be upheld.

9. Accordingly this petition fails being devoid of merits and the same is dismissed with no order as to costs.

