(1996) 03 PAT CK 0048

In the Patna High Court

Case No : C.W.J.C. No. 7762 of 1994

Shree Goshala and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 19-03-1996

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 29, 29(1)(b)(v), 29(b)(v)

Citation : (1997) 1 BLJR 354 : (1996) 2 BLJR 1366 : (1996) 1 PLJR 815

Hon'ble Judges : A.K. Ganguly, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Ganguly, J.—The question which falls for decision before this Court in this writ petition is whether a ''Goshala'' is entitled to the statutory exemption from the Ceiling Law as provided in Chapter-XI u/s 29 (b)(v) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 (hereinafter referred to as the said Act), Section 29 (b)(v) of the said Act is set out below;

Such extent of land held on the date of commencement of this Act by such public or charitable bodies or religious institution of public nature, running educational institutions, hospital, maternity homes and orphanages as may be notified by the State Government in this behalf, so long as they continue as such.

2. On a plain reading of the said Section it appears that the exemption under the aforesaid provisions is available only to such public or charitable bodies as are running educational institutions, hospital, maternity homes and orphanages to the extent notified by the State Government. In order to enjoy such exemption, the bodies must also continue as such.

3. Therefore, the exemption is not available to all Public or Charitable bodies but only to those bodies who carry on certain type of activities mentioned in Clause

(v) namely, running educational institution, hospitals, maternity homes and orphanages.

4. Now the question is whether a ''Goshala'' can be called a public or charitable body carrying on any of the aforesaid specified activities as enumerated in Sub-clause (v) of Clause (b) of Section 29 (1) of the said Act.

5. For a decision of this question the facts of this case which are relevant are noted below:

The petitioners have prayed for quashing of the order dated 7/10-5-1991 whereby the state-respondent directed the Collector, Bhagalpur that ''Goshala'' has not been granted any exemption u/s 29 of the said Act and as such there is no question of granting exemption to the petitioner''s ''Goshala'' u/s 29 of the said Act. The petitioners have also prayed for quashing of the consequential order dated 29th July, 1994 passed by the Additional Collector (Land Ceiling) Bhagalpur whereby the said Collector pursuant to the order of the Government directed that the action be taken for acquiring surplus land of the petitioner''s ''Goshala''.

6. It has been asserted in the writ petition that petitioner Nos. 1, 2 and 3 are registered under the Societies Registration Act and they have kept invalid and diseased cattle in the said ''Goshala'' and they are claiming exemption under provisions of Section 29 (1)(b) of the said Act in respect to the entire land which belongs to the said ''Goshala''. It has also been stated that in the year, 1973 a Ceiling case No. 2967 of 1973 was initiated against the petitioner by the Collector, Bhagalpur and all the properties of petitioner''s ''Goshala'' were treated as one in such ceiling proceeding. The details of returns were filed by the petitioners claiming exemption u/s 29 of the said Act. In connection with such ceiling proceeding the circle Inspector, Jagdishpur submitted an enquiry report to the Circle Officer. Thereafter the Deputy Collector, Land Reforms Sadar Bhagalpur submitted his report to the Collector, Bhagalpur on 17.7.1975. According to the petitioner the report contains very many incorrect facts about the way and manner in which the petitioner ''Goshala'' are being run. Ultimately the Collector passed an order and recommended that 506 acres of land may be exempted for the ''Goshala'' for growing fodder, maintaining pasture lands and further noted that this would leave about 256 acres of land for acquisition. The Collector further held that Section 5 of the Ceiling Act will not apply to the exempted land and as such the transfer of 586 bighas 5 kathas 9 dhurs of land on 31st January, 1976 will not attract the provision of Section 5 of the said Act. He passed an order to the, effect that the State Government may be moved to notify 500 acres of land belonging to the ''Goshala'' for exemption under the relevant provisions of Section 29 of the said Act.

7. The grievance of the petitioner is that subsequently the Collector passed order dated 20th December, 1976 in which he held that only 200 acres of land can be exempted which would meet the requirement of maintaining 407 cattle specially

when the ''Goshala'' was in possession of certain building and as such the Collector recommended that the balance land should be declared surplus.

8. Against the said order dated 20th December, 1976 passed by the Collector Bhagalpur the petitioners preferred an appeal before the Board of Revenue, Bihar which was numbered as Appeal No. 125 of 1977. The said appeal was disposed of by an order dated 4th May, 1977 to the effect that the order of the Collector is a mere recommendation in terms of Rule-9 of the Ceiling Rules in respect of the exemption claimed under item (v) of Clauses (b) of Sub-section (1) of Section 29 of the said Act. The member Board of Revenue also stated that it was for the State Government to take decision in respect of the notifying such extent of land as it may deem fir and proper. Such recommendation of the Collector not being a final order no appeal no appeal lies against the order u/s 30 of the Act and as such the appeal was held to be not maintainable.

9. The further case of the petitioner is that prior to coming to Court the respondents had already started exerting pressure on the petitioner''s ''Goshala'' to surrender the plot of land in question. Therefore, a State level Organisation came before this Court by filing a writ-petition. The said writ-petition was disposed of with certain observations.

10. Ultimately on 10th May, 1994 the Additional Secretary to the Government in the Department of Revenue and Land Reforms passed on order to the effect that no exemption has been granted to the ''Goshala'' u/s 20 of the Ceiling Act and as such there is no such question of granting any exemption. The order further stated that as the recommendation of the Collector is not in accordance with law quick steps may be taken for acquiring the surplus land of petitioner''s ''Goshalas''. The said order is impugned in this writ petition. On receipt of the said order dated-lOth May, 1994 the Additional Collector (Land Ceiling) passed a consequential order dated 29th, July, 1994 to the effect that further action would be taken immediately for acquiring the surplus land of the ''Goshalas'' in the light of the direction contained on letter dated 10th May, 1994.

11. In the counter affidavit filed by the respondent it has been stated that a plain reading of the provisions of Section 29 (1)(b) Clause (v) of the said Act ''Goshalas'' are not entitled to get exemption under the said Act. It has also been stated the petitioner''s ''Goshalas'' are not charitable institutions and they are not run on charitable basis.

12. Against the background of the aforesaid pleadings the question stated above falls for consideration before this Court.

13. Learned Counsel for the petitioner has submitted that the petitioner is a society registered under the Societies Registration Act and they run the ''Goshalas'' in accordance with the provisions of other Goshalas Act, 1950. Under the provisions of the said Act, the Goshala has been defined u/s 2(d) of the said Act. Relying on the said definition the petitioners have said defined u/s 2(d) the said Act. Relying on the said definition the petitioners have said that the

petitioners should be considered charitable institutions which are established for the purpose of keeping or maintaining the cattle and also for the purpose of protection and treatment of infirm and diseased cattle.

14. Learned Counsel for the respondents has on the other hand stated that the petitioners have not stated that they are doing anything for the purpose of treatment of diseased and infirm catties. Their argument is that no such case has been made out in the petition. The petitioner, has however stated that ''Goshala'' within the meaning of the said Act must be treated as charitable organization, but from the averment made in the writ petition this Court does not find that there is sufficient pleading to the effect that the petitioner''s organisation are functioning as charitable organisation or that they are carrying on treatment of aged and infirm catties. There are some vague assertions to the aforesaid effect but no clear case has been made out.

15. Be that it may, assumed that the petitioners organisation are the charitable organisation within the meaning of Section 2(b) of the Goshala Act and they are engaged in treatment of infirm aged cattle even then in my view the petitioners are not entitled to get exemption under the provisions of the said Act for the reasons indicated below.

16. The learned Counsel appearing on behalf of the petitioner has raised two points in support of the claim of exemption of the petitioner ''Goshala'', namely, (i) As a ''Goshala'' within the meaning of Section 2(d) of the said Act the petitioners carry on treatment of infirm and aged catties so it comes within the expression on ''Hospital'' used in Sub-clause (v) Section 29 (1)(b) of the said Act and as such it is entitled to exemption, (ii) In a Division Bench judgment of this Court reported in 1979 BBCJ page 461 in the case of Gobardhan Goshala v. The State of Bihar and Ors. observations have been made regarding exemption give to ''Goshala''. Learned Counsel for the petitioner, has however, conceded that the points with which this Court is concerned in this case were, however, not decided in the Division Bench Judgment in the case of Gobardhan Goshala (supra). No other point has been urged by the petitioner Counsel.

17. this Court proposed to deal with the second point first.

18. In this Division Bench Judgment in the case of Gobardhan Goshala (supra) it was never contended before the Division Bench that ''Goshala'' are not entitled to exemption under the provision of Section 29 (1)(b)(v) of the Act. As such the Court in the said case of Gobardhan Goshala (supra) had no occasion to decide that issue. The judgment of the Division Bench in the case of Gobardhan Goshala (supra) is based on an assumption that the ''Goshalas'' are entitled to exemption u/s 29 (1)(b)(v) of the Act and proceeding on that basis the learned Judges of the Division Bench in the case of Gobardhan Goshala (supra) gave certain direction on the property of enquiry under Sections 8 and 9 of the Rules before allowing exemption under the said Act. The basic question with which this Court is concerned here as to whether ''Goshalas'' are at all entitled to exemption or

not was never raised and obviously not decided in the said judgment and as such the aforesaid judgment of the Division Bench in the case of Gobardhan Goshala (supra) cannot be treated to be a binder precedent on the question with which this Court is concerned.

19. It is well known right from the days of Queen v. Lethan 1910 AC 495 that a decision is an authority for what it actually decides and not what remotely or even logically follows from it. This ratio has been followed by the Apex Court in a numbers of cases.

20. The Hon''ble Supreme Court has also repeatedly observed that a decision on a question which has not been argued cannot be treated as a precedent. Relevant observation to this effect have been made by the Apex Court in the case of Rajput Ruda Meha and Others Vs. State of Gujarat, . The said decision in the case of Raipur Ruda Meha (supra) has been followed by the Supreme Court also in the case of Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, .

21. In the case of Municipal Corporation of Delhi Vs. Gurnam Kaur, the Hon''ble Supreme Court page-38 the Hon''ble Supreme Court held that ''Precedents sub-silentio without argument are of no moment.''

In this connection the elucidation of principle of sub-silentio in his famous treatise on jurisprudence, 12th Edition at page-153 is set out.

A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the Court or present to its mind. The Court may consciously decide in favor of one party because of point A which it consider and pronounces upon. It may be shown however, that logically the Court should not have decide in favor of the particular party unless it also decided point B in his favor, but point B was not argued or considered by the Court. In such circumstances, although point-B was logically involved in specific out come, the decision is not an authority on point B. Point B is said to pass sub-silentio.

Even it if is contended by the Counsel for the petitioner (in fact has not been so contended) that the judgment in the case of Gobardhan Goshala (supra) could not have been passed unless it decided that the ''Goshalas'' are also entitled to exemption is also of no avail. The said question that the ''Goshalas'' are entitled to exemption was never debated nor argued in that decision. In such circumstances, the decision of the Division Bench in the case of Gobardhan Goshala (supra) is not an authority on the point that the ''Goshalas'' are entitled to exemption under the aforesaid provisions of the said Act aforesaid provisions of the said Act. All observations to the aforesaid effect must be treated to have passed sub silentio. The aforesaid elucidation of legal principles by salmonds has been accepted with approval in the case of Municipal Corporation Delhi (supra). In the said decision of the Municipal Corporation Delhi (supra) the learned Judge also referred to the Judgment of the Court of Appeal in the case of Lanka State Motor Co. London v. Briemy Ltd., 1941 (1) K.B. 675 and earn to the conclusion that the points which have been decided without argument and without reference to the crucial word of the rule and without citation of any authority is not binding and "would not be followed", in that context the learned Judge of the Supreme Court in the case of Delhi Municipal Corporation (supra) observed as follows:

Precedents sub silentio and without argument are of no moment. This rule has even since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a Judge, however eminent, can be treated as an ex-cathedra statement, having the weight of authority.

22. In view of aforesaid clear position of law relating to precedent, I am of the view that the decision of the Division Bench in the case of Gobardhan Goshala is not a precedent on the question with which this Court is concerned in this case and as such the said decision on the question of issue is no binding upon this Court.

23. Now on the question of interpretation of the said Sub-clause (v) of Section 29 (1)(b), this Court is of the view that it cannot be held that a Goshala is a Hospital within the meaning of the aforesaid Sub-clause (b).

24. It is clear from a plain reading of the said sub-clause that assuming ''Goshala'' is a Charitable organisation even then all the public and charitable organisation have not been granted exemption under the said sub-clause. Only those public or charitable bodies which carry on the functions as enumerated in the said sub-clause are entitled to exemption. The said enumeration of activities under the sub-clause is exhaustive and not illustrative. The Court also noticed that the provisions of the said Ceiling Act have been given overriding effect u/s 3 thereof and it overrides the provisions of Bihar-Goshala Act. But even without such overriding provisions there is no conflict between the definition of ''Goshala'' u/s 2(d) of the Bihar Goshala Act and the provisions of Sub-clause (v) of Section 29 (1)(b) of the said Ceiling Act.

25. The word ''Hospital'' has however not been defined in the said Act. Therefore, this Court will go by the ordinary meaning of such words in the judicial dictionary.

26. In Stroud''s Judicial Dictionary, 5th Edition, hospital has been defined as follows:

Prima facie the word "hospital" indicates a place in which patients are received for continuous treatment and excludes places to which patients merely resort, for the purpose of occasional medical or surgical aid such as is normally obtained at the outpatients'' department of Hospital. It was thereof held not to include the Birmingham General Dispensary (Re Ford, Ford, v. Ford, 172 L. T-217).

In words and Phrases (Permanent Edition), hospital has been described as follows:

The primary meaning of the word ''hospital'' was an inn where guests were entertained for compensation. Now the word is more commonly applied to a building founded from charity, where the sick and disabled may be treated solely at their own expense, or at the expense of a corporation which receives only indigent Patients and is sometimes known as an "almshouse" and in either case it becomes a charitable institution. (In re Curtiss, 7 N. y.s. 207, 208, 1 Con, sur, 471).

In view of meaning of the word hospital given in the those judicial dictionaries, it difficult for this Court to treat a ''Goshala'' where cattle are kept or where old and infirm cattle are treated as a hospital. In my opinion, including of ''Goshala'' within the word Hospital as used the relevant clause of the said Act cannot be done without doing violence to the language of the Act.

27. Apart from that the provisions which has fallen for interpretation before this Court in this case is an exemption provision. The Apex Court has repeatedly given the guidelines in matters of interpretation of exemption provisions in its various judgments. Reference in this connection may be made to the decision of the Apex Court in the case of Union of India v. Wood Papers Mills Ltd. reported in 1990 (4) SCC page 254 (para-4 of the judgment) wherein the Apex Court was pleased to observe as follows:

Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject fails in the notification or in the exemption clause then in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction...."

(Emphasis added).

The said interpretation given in the case of Union of India (supra) has been accepted also subsequently by the Supreme Court in Novapan India Limited v. Collector of Central Excise and Customs reported in 1994 supplementary (3) SCC 606 and the passage is at page-614.

28. Since the question here is whether ''Goshala'' can be brought under the purview of the exemption clause as a ''hospital'' strict rule of construction should be followed. In Collector of Central Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., the Apex Court cautioned that in the matters of interpretation of exemption clause absurd results of construction should be avoided. In my view, to hold that a ''Goshala'' is also a hospital is totally absurd.

29. Going by the aforesaid principles, this Court is unable to pursued itself that a "Goshala" can be included within the expiation ''hospital'' under the relevant clause. As such this Court is of the view that ''Goshala'' does not quality for

exemption under Sub-clause (v) of Section 29 (b) of the said Act.

30. In view of the discussions aforesaid, this Court holds that there is no reason for interference with the orders dated -10th May, 1994 passed by the State Government which is at Annexure-14 and the consequential order dated 29th July, 1994 which is at Annexure-15.

31. This writ petition is therefore dismissed but in the facts and circumstances of this case there will be no order as costs.