(2005) 08 BOM CK 0039

In the Bombay High Court

Case No : Civil Revision Application No. 507 of 1997

Smt. Lilavati Balkrishna Masal (since deceased represented by heirs Shri Suresh Balkrishna Masal, Shri Avinash Balkrishna Masal (Deceased through legal heirs (Smt. Anite Avinash Masal and Others) and Others) — APPELLANT

Vs

Ballal Vinayak Devasthan — RESPONDENT

Date of Decision : 03-08-2005

Acts Referred:

Bombay Tenancy and Agricultural Lands Act, 1948 — Section 10, 10A, 11, 13, 27

Citation : (2005) 4 ALLMR 198 : (2006) 1 BomCR 371 : (2005) 107 BOMLR 280 : (2005) 4 MhLj 476

Hon'ble Judges : B.H. Marlapalle, J

Bench : Single Bench

Advocate : P.S. Dani and V.P. Navare, for the Appellant; S.M. Gorwadkar and Rohit Pawaskar for respondent Nos. 1, 2, 4 and 7, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—In Regular Civil Suit No. 1 of 1988 the petitioners were impleaded as defendants and they had filed an application at Exhibit 17 to frame a preliminary issue on the point of Jurisdiction. This application was rejected by the trial Court and in an appeal the District Court set aside the order and directed the trial Court to frame the preliminary issue and to decide the same by allowing the parties to lead evidence vide order dated 12-6-1991 in Misc. Civil Appeal No. 26 of 1990. Accordingly the trial Court on remand framed the following issues

"Whether the Civil Court has jurisdiction to try and entertain the present suit in view of -the contentions raised in W.S. filed by the defendant. "

2. The trial Court vide its order date 20-10-1992 held that it had no jurisdiction to try the suit and, therefore, the plaint was returned to the plaintiff to file in the proper Court. Being aggrieved by the said order the plaintiffs filed Civil Misc.

Appeal No. 80 of 1992 which came to be allowed by the learned Addl. District Judge, Raigad vide his judgment and order dated 7/18/1996. This decision of the lower Appellate Court is under challenge in this revision application. The trial Court vide its order dated 20-18-1992 noted that the plaintiff is a registered public trust and the defendant had produced the document which went to show that her husband was the tenant of the suit land and no exemption certificate u/s 88-B of the Bombay Tenancy and Agricultural Lands Act, 1948 ("the Bombay Tenancy Act" for short) was produced on record by the plaintiff''s. During the pendency of the appeal i.e. Misc. Civil Appeal No. 80 of 1992 the plaintiffs Trust submitted an application for certificate u/s 88-B of the Bombay Tenancy Act before the Sub Divisional Officer at Alibaug and the said application came to be registered as Tenancy Application No. 3 of 1993. The application was decided on 28-2-1994 by the SDO who was pleased to reject the same. He held that the applicant-Trust did not meet the requirements of Section 88-B of the Tenancy Act. However, the learned Additional District Judge referred to a decision in the case of Poulad Deochand Patil v. Samasta Aher Nhavi Panch Trust and Anr. 1992 (2) B.C.R. 5833 and held that inspite of the order passed by the SDO on 28/2/1994 the Civil Court shall be required to permit the plaintiff-Trust to adduce evidence to prove to its satisfaction that the Trust is falling within the category specified u/s 88-B of the Act. The lower Appellate Court inferred from the decision of this Court in Poulad Patil''s case (Supra), as under:

"Thus the ratio in Poulad Patil''s case is that though the SDO has rejected the application of plaintiff-Trust for issuing exemption certificate u/s 88B(ii), plaintiff-Trust is entitled to adduce evidence and prove to the satisfaction of the Court that the Trust is registered trust and entire income of the suit land is appropriated for the purpose of such trust."

3. In para 10 of its judgment the lower Appellate Court reproduced a paragraph from the judgment of this Court in Poulad Patil''s case (Supra). The concluding sentence of the said reproduction reads as under:

"..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."

It is, therefore, evident that the inference drawn by the lower Appellate Court on the basis of the decision of this Court in Poulad Patil''s case is wholly erroneous. This Court did not state that even though the SDO rejects the application of the Trust for issuing exemption u/s 88B(E), the plaintiff is entitled to adduce evidence and prove to the satisfaction of the Court that it is a registered trust and the entire income of the suit land is appropriated for its purpose. The observations made by this Court in the reproduced paragraph indicate that in a given case if an application was not made for exemption certificate u/s 88B or if such application was pending without any decision, any of such eventualities would not come in the way of the plaintiff-Trust in leading evidence before the

Civil Court so as to prove that all the parameters as set out u/s 88-B are satisfied by it. The findings recorded by the lower Appellate Court also run counter to the scheme of the Bombay Tenancy Act and the said observations are without jurisdiction.

4. Sections 76, 85 and 88B of the Tenancy: Act are reproduced as under for ready reference:

76. Revision :- (1) Notwithstanding anything contained in the Bombay Revenue Tribunal Act, 1939, an application for revision may be made to the Maharashtra Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only-

(a) that the order of the Collector was contrary to law ;

(b) that the Collector failed to determine some material issue of law; or

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

(2) In deciding applications under this Section the Maharashtra Revenue Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revenue Tribunal.

85. Bar of jurisdictions:- (1) No Civil Court shall have jurisdiction to settle, decide or deal with any question including a question whether a person is or was at any time in the past a tenant and whether any such tenant is or should be deemed to have purchased from his landlord the land held by him which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

(2) No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

88B. Exemption of certain provisions to land of local authorities, universities and trusts. ... (1) Nothing in 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 in 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) to lands held or leased by a local authority, or University established by law in the Bombay area of the State of Maharashtra; and

(b) to lands which are the property of a trust for an educational purpose, a hospital, Panjarpole, Gaushala or an institution for public religious worship:

Provided that,

(i) such trust is or is deemed to be registered under the Bombay Public Trusts

Act, 1958 and

(ii) the entire income of such lands is appropriated for the purposes of such trust;

(c) to lands assigned or donated by any person before the 1st day of August 1956 for the purpose of rendering any of the following services useful to the community, namely :-

maintenance of water works, lighting or filling of water troughs for cattle:

(d) to lands taken under management temporarily by the Civil, Revenue or Criminal Courts by themselves, or through receivers appointed by them, till the decision of the title of rightful holders:

Provided that from the date on which the land referred to in clause (d) is released from management, all the foregoing provisions of this Act shall apply thereto; but subject to the notifications that in the case of a tenancy, not being a permanent tenancy, which on that date subsists in the land,

(i) the landlord shall be entitled to terminate the tenancy u/s 31 or u/s 33B in the case of a certificated landlord within one year from such date; and

(ii) within one year from the expiry of the period during which the landlord or certificated landlord is entitled to terminate the tenancy as aforesaid, the tenant shall have the right to purchase the land u/s 32 or under Section, 33-C in the case of an excluded tenant and

(iii) the provisions of Sections 31 to 31-D, (both inclusive) or Sections 33-A and 33-B in the case of a certificated landlord and Sections 32 to 38-R, (both inclusive) for Sections 33A and 33-C in the case of an excluded tenant shall, so far as may be applicable, apply to the termination of a tenancy or the right to purchase the land as aforesaid:

Provided further that, -

(a) in the case of a permanent tenancy the permanent tenant shall be entitled to purchase the land held by him on permanent tenancy,

(i) within one year from the date on which the estate or land is released from management, or

(ii) where such estate or land was released from management after the Tillers'' day but before the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960, within one year from such commencement, and

(b) where such permanent tenant is desirous of exercising the right conferred on him under this proviso, he shall accordingly inform the landlord and Tribunal in the prescribed manner within the said period of one year avid the provisions of Sections 38 to 38-R shall so far as may be applicable, apply to the right of the permanent tenant to purchase the land.

(2) For the purposes of this Section, a certificate granted by the Collector, after holding an inquiry, that the conditions in the proviso to Sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf.

5. Section 88B(2) states that for the purpose of Section 38-B the certificate granted by the Collector, after holding an inquiry, that the conditions in the proviso to Sub-section (1) are satisfied by any trust shall be conclusive evidence in that behalf. Corollary to this must also be inferred from Sub-section (2) of Section 88B of the Act and more so because the Collector is required to conduct an enquiry to decide such an application for exemption. The evidence which is considered by the Collector in allowing the application has been held to be conclusive proof regarding the status of the trust. In a given case during the course of enquiry there may not be any evidence and, therefore, such an application could be rejected by the Collector. Only if the result is positive on an application made to the Collector would lead to a conclusive proof cannot be a sound legal proposition. Granting of a certificate or rejecting the grant of a certificate are two sides of the same coin and, therefore, in a given case, like one at hand, if the application is rejected, it ought to be held to be a conclusive evidence that the trust is not entitled for claiming exemption unless of course such an order passed by the Collector is challenged u/s 76 and the same is set aside or reversed or remanded for fresh enquiry. Section 76 of the Act provides for a remedy of revision from the order passed by the Collector or the SDO in an application for exemption certificate u/s 88B, and the said remedy is available on the grounds stated therein and such a revision would lie before the Maharashtra Revenue Tribunal. Section 85 of the Act deals with the bar of Jurisdiction of the civil court. If the proposition set out by the lower Appellate Court is accepted to be correct, the order passed by the SDO/Collector rejecting the exemption certificate would stand set aside by the civil court inspite of the fact that no order of the Mamlatdar, Tribunal, Collector or the Maharashtra Revenue Tribunal or the State Government made under the said Act shall be questioned in any civil court.

6. The learned counsel for the Trust referred to the Constitution Bench decision in the case of Smt. Somavanti and Others Vs. The State of Punjab and Others, . The reliance is misplaced in view of the provisions of Section 88B(2) and once the certificate is rejected that it self must be accepted to be a conclusive evidence that the trust is not entitled for exemption u/s 88B of the Act avid the only remedy for such an applicant would be to challenge that order u/s 76 of the Act. In the absence of such a challenge the order would receive finality and it would not be permissible for the trust to state that it still has a right to lead evidence to prove the parameters set out u/s 88B before the civil court. Entertaining such an application would be nullifying the order passed by the Collector and that too without jurisdiction.

7. In the premises the impugned decision of the lower Appellate Court suffers from errors apparent on the face of the record and the reasoning given in support of the said order is without jurisdiction and, therefore, the said decision

is unsustainable in law. The revision application thus succeeds and the same is hereby allowed. The impugned judgment and order dated 7/12/96 passed in Misc., Civil Appeal No. 80 of 1992 is hereby, quashed and set aside and said Misc. Civil Appeal No. 80 of 1992 is dismissed. The rule is made absolute accordingly with no order as to costs.