

(1971) 11 BOM CK 0009

In the Bombay High Court

Case No : Special Civil Application No. 545 of 1970

Trust for Education, Achalpur

APPELLANT

Vs

Chandrabhan Akaji Dhor

RESPONDENT

Date of Decision : 17-11-1971

Acts Referred:

Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 — Section 129

Citation : AIR 1972 Bom 235 : (1972) MhLj 164

Hon'ble Judges : Chandurkar, J

Bench : Single Bench

Advocate : R.N. Deshpande, for the Appellant; N.N. Deshpande, for the Respondent

Judgement

1. The question which arises in this petition is whether the lands in respect of which a trust has been made by the owner for education of the male members and children in his family are exempted from the provisions relating to the statutory transfer of ownership. The respondent is the tenant of survey number 13, area 15 acres 1 guntha, of village Bag Ambada, tahsil Achalpur, district Amravati. This field originally belonged to one Madhaorao Vithalrao Pangarkar. He got this field in a family partition made on 13-1-1950 when the respondent was already cultivating the field as a lessee. Madhaorao Pangarkar created a trust on 16-8-1960 in respect of about 60 acres of land including the land in dispute and himself became the managing trustee. The trust deed which is a registered document recites that the income of the trust property is required to be spent exclusively for the education of all the existing male children in the family as also for the education of the male children that would be born from time to time in the family.

2. When the proceedings for transfer of statutory ownership were started before the Agricultural Lands Tribunal, Achalpur, it was contended on behalf of the landlord that the tenant cannot get any right to purchase the field as it was owned by the trust for educational purposes. In his evidence the original owner

stated that his two sons and his grand-son were taking education and that the field was kept separate for educational purposes. It was expressly stated by him that the trust was made exclusively for the education of the family members.

3. The Agricultural Lands Tribunal accepted the contention of the landlord and held that the provisions of Sections 46 to 49 - A of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereinafter referred to as the Tenancy Act, did not apply to the field in view of the provisions of Section 129 (b) of the Tenancy Act and the proceedings were, therefore, dropped.

4. In an appeal filed by the respondent the Special Deputy Collector reversed the order of the Agricultural Lands Tribunal and he took the view that a trust, beneficiaries of which were the members of the family, was not exempted from the provisions of compulsory transfer of ownership. Further he also held that no accounts had been produced to prove that the entire income of the land was appropriated towards the purpose for which the trust was created. He, therefore, remanded the case to the Agricultural Lands Tribunal for fixation of the purchase price.

5. The petitioner then filed a revision application before the Maharashtra Revenue Tribunal. The Revenue Tribunal took the view that the beneficiaries of the trust were the present and future members of the Pangarkar family and the benefit of the trust property was "strictly limited to the education of the born and unborn members of the family" and since the provisions of Section 129 of the Tenancy Act indicated that the protection under that section was granted only to those trusts which were created for the benefit of the public, the respondent was entitled to a transfer of ownership of the law in Section 129 was clear that the protection was given only to those trusts which were created for a public purpose. The revision application filed by the petitioner was therefore, rejected. The petitioner has now filed this petition challenging the orders of the Maharashtra Revenue Tribunal and Special Deputy Collector.

6. In this petition also the argument for the petitioner of the learned counsel is that even a private trust for the benefit of members of the settler's family are included in the category of lands referred to in Section 129 (b) of the Tenancy Act. It is contended that while the word "public" is expressly used when referring to an institution for public religious worship, that word is not used with reference to the other institutions such as trust for educational purpose, hospital, Panjarpole and Gaushala, and therefore, it is contended that the trust for the above purposes need not be for the public purpose so as to claim exemption under S. 129 of the Tenancy Act. Reliance was placed on the provisions of Section 88 - B of the Bombay Tenancy and Agricultural Lands Act, 1948 which contains an express provision that a trust claiming an exemption under that Section must be one which is or is deemed to be registered under the Bombay Public Trusts Act, 1950, and it is contended that if the legislature intended that the benefit of Section 129 of the Tenancy Act, 1958, should be given only to a trust for a public purpose, then the requirement of registration under the

Bombay Public Trusts Act, 1950, would have found place in Section 129 of the Tenancy Act also.

7. The material part of Section 129 of the Bombay Tenancy Act, 1958, is as follows :-

"129. Nothing in the foregoing provisions except Section 2, the provisions of Chapter II (excluding Sections 21, 22, 23, 24 and 37) and Section 91 and the provisions of Chapters X and XII in so far as the provisions of the said Chapters are applicable to any of the matters referred to in sections mentioned above, shall apply -

(a) to lands held or leased by a local authority, of university established by law in the State ;

(b) to lands which are the property of a trust for an educational purpose, hospital Panjarpole, Gaushala, or an institution for public religious worship, provided 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 commencement of this Act 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 any land taken under management by a Civil, Revenue or Criminal Court ;

Provided

Explanation :- For the purpose of clause (b), a certificate granted by the Collector after holding an inquiry, that the conditions mentioned in the said clause are satisfied by a trust shall be the conclusive evidence in that behalf".

It cannot be disputed that the provisions of Sections 41 to 49 - A of the Tenancy Act which are contained in Chapter III of the Act are not applicable in the case of lands referred to in clauses (a) to (d) of S. 129 of the Tenancy Act. Under clause (a) lands held or leased by a local authority, or university established by law in the State are exempted from the provisions relating to statutory transfer of ownership. Similarly Clause (c) expressly refers to lands assigned or donated by any person before the commencement of the Act for the purpose of rendering services useful to the community as indicated in that clause and such lands are exempted from the operation of the provisions regarding statutory transfer of ownership. In the original Bill and the Act clause (d) was not there at all and it was introduced for the first time by Maharashtra Act No. V of 1961. It is clear that clauses (a) and (c) of Section 129 refers to lands which are used for public purposes or purposes which are beneficial to the community. A local authority and an university are institutions for public benefit. Clause (c) expressly refers to lands assigned or donated for rendering services useful to the community, such as maintenance of water works, lighting or filling of water troughs for cattle. The scheme of clauses (a) and (c) of Section 129 cannot be left out of consideration

while considering the question whether the purposes in clause (b) also must have some reference to the community at large. The purposes of Panjarpole and Gaushala are obviously public purposes. A Panjarpole connotes a charitable institution which takes care of old, sick and disabled animals. A Panjarpole is thus always run for a public charitable purpose. The nature and purpose of the institution called Gaushala is also similar. Since Panjarpole and Gaushala by their very nature are institutions of public benefit it was not necessary to qualify these words by the word "public". With reference to the institution for religious worship also the legislature has expressly stated that it is only if the institution is for public religious worship that the lands belonging to it will be exempted from the provisions relating to statutory transfer of ownership.

It is thus obvious that the scheme of the provisions of clauses (a), (b) and (c) of Section 129 of the Tenancy Act was to exempt from the operation of the provisions regarding statutory transfer of ownership all lands from which the landlord or member of his family did not receive benefit and which were set apart for public benefit. If that be the scheme, then even the trust for educational purpose referred to in clause (b) of S. 129 must have reference to public benefit. It is necessary therefore that if the trust specified in clause (b) of Section 129 claim exemption from the operation of the provisions regarding transfer of ownership they must be trusts which are constituted for the benefit either of the public at large or some considerable proportion of it answering the public description. It follows that they must be charitable trusts as "public trust" and "charitable trust" are generally considered as synonymous expressions. (See Lewin on Trusts, 15th Edition, Chapter I, S. 2).

8. It is true that the condition of registration as a trust under the Bombay Public Trusts Act, 1950, which is required to be satisfied by the trust before it claims an exemption u/s 88 - B of the Bombay Tenancy and Agricultural Lands Act, 1948 is not to be found and, indeed, could not be found in Section 129 of the Tenancy Act, 1958. The Tenancy Act, 1958 came into force in the Vidarbha Region of the erstwhile State of Bombay with effect from 30th December 1958. The Bombay Public Trusts Act, 1950, was not then in force in the Vidarbha Region. For the first time the Act became applicable to the Vidarbha Region by virtue of the Bombay Public Trusts (Unification and Amendment) Act, 1959, which came into force on 1-2-1961. The requirement of registration under the Bombay Public Trusts Act, 1950, could not, therefore, have been made a condition for claiming the benefit of exemption u/s 129 and the absence of that condition, therefore, is of no significance.

9. There is no doubt that the trust which the original landlord Pangarkar has made is clearly a private family trust and is not a public charitable trust. The gift is in its nature a private or family benefaction. It is purely a personal gift and a trust for private individuals. An established principle of the law of charity is that a purpose is not charitable unless it is directed to the public benefit and the element of public benefit is the necessary condition of legal charity. (See

halsbury's Laws of England, 3rd Edition, Vol. 4, para 488). The essential difference between a private and a public trust is that in the former beneficiaries are definite and ascertained individuals or who within a definite time can be definitely ascertained, but in the latter the beneficial interest must be vested in an unascertained and fluctuating body of persons, either public at large or some considerable portion of trust for the education of the members of one's own family cannot be called a public trust. In *Oppenheim v. Tobacco Securities Trust Co. Ltd.* 1951 AC 297, Lord Simonds has observed that a trust for the education of members of a family or of a number of families cannot be regarded as charitable. It was further observed that "a group of persons may be numerous but, if the nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community for charitable purposes." In *Re Compton Powell v. Compton* (1945) 1 All ER 198 it was held that a gift for the education of descendants of named person introduced into their qualification a purely personal element and such gift was therefore to be regarded as a family trust and not as one for the benefit of the section of the community. In that case Lord Greene M. R. after referring to certain observations made by Gayan Duffy, J. in *RE. Moenery* (1941) Ir. R 323 said :

"If I may respectfully say so, this reasoning appears to me to be unassailable. Even if my view that the necessity of founding a claim upon the fact of kinship to an individual precludes the possibility of regarding a gift as charitable is too widely stated, I am of the opinion that a gift for the education of descendants of named persons must be regarded as a family trust and not as one for the benefit of a section of the community on any fair view of what that phrase may mean."

It is not, therefore, possible to accept the contention that the lands in respect of which a trust was made for the education of the settler's children and their children would be entitled to the exemption u/s 129 (b) of the Tenancy Act, 1958.

10. The petition must, therefore, fail and is dismissed with costs.

11. Petition dismissed.