

(2011) 02 BOM CK 0167

Bombay High Court (Nagpur Bench)

Case No: Letters Patent Appeal No. 479 of 2010 in Writ Petition No. 3350 of 1993

Shri Gopaldas Deosthan

APPELLANT

Vs

State of Maharashtra and
Chairman, Surplus Land
Determination Tribunal

RESPONDENT

Date of Decision: Feb. 9, 2011

Acts Referred:

- Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 - Section 47(2)

Citation: (2011) 2 ALLMR 877 : (2011) 2 BomCR 502 : (2011) 3 MhLj 50

Hon'ble Judges: V.K. Tahilramani, J; S.A. Bobde, J

Bench: Division Bench

Advocate: S.V. Sohoni, for the Appellant; Tajvar Khan, A.G.P., for the Respondent

Final Decision: Allowed

Judgement

S.A. Bobde, J.

Heard. Admit. Heard finally by consent of the parties.

2. This appeal is preferred against judgment of the learned Single Judge upholding the order of Sub Divisional Officer, Wardha refusing exemption to the Appellant-Trust u/s 47(2)(a) of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (Hereinafter referred to as "the Act"). The Appellant holds agricultural land in villages Bhidi, Hasnapur, Fatepur, Huradapur in excess of the ceiling limit of 52 Acres. The Appellant-Trust, therefore, applied for exemption u/s 47(2)(a) of the Act for the entire land. The Appellant-Trust submitted an undertaking on 04.02.1976 in accordance with Section 47(2)(a) of the Act, that it would appropriate major portion of the income from such land within a period of two years from the date of publication of the order granting exemption. However, the Officer on Special Duty, exercised the powers of Government u/s 47(2)(a) of the Act and rejected the application for exemption on the ground that since 1976, i.e. when

the Trust gave an undertaking, it has spent only Rs. 200/-for the distribution of text books to the students. Therefore, the Officer on Special Duty held that the Trust has not spent any amount on medical relief and education as required by Section 47(2)(a) of the Act, which requires a Trust to appropriate major portion of its income from its land for the purposes of education or medical relief or both. Thus, in effect, the application for exemption was rejected on the ground that a major portion of the income from the land was not appropriated by the Trust for education and medical relief after the Trust gave an undertaking in the year 1976.

Section 47(2) of the Act reads as under:

47. Exempted lands.

(1)

(2) Subject to any rules made in this behalf, the State Government may, after such inquiry as it deems fit, by an order in the Official Gazette, exempt from the provisions of this Act, any of the following lands on such terms and conditions including the extent of the area to be exempted as may be specified in the order, namely:

(a) land held before the 26th day of September, 1970 by a public trust or a wakf the major portion of the land being appropriated for the purpose of education or medical relief or both or where the major portion of the income is not so appropriated but an undertaking in the prescribed form is given within six months of the commencement date (or within such further period as the State Government may allow in that behalf) to the Collector, that the major portion of the income of such land will, within a period of two years from the date of publication of the order granting exemption be appropriated for those purposes;

(b) land held before the 26th day of September, 1970, by any person for stud farm or by any public trust or wakf for panjrapole or gaushala;

(bb) land held before the 26th day of September, by a public limited company, a public trust or a wakf for the purpose of breeding of cattle or sheep:

Provided that, nothing in this clause shall apply to land used for raising of garden produce or crops (other than grass or fodder crop) any time during a continuous period of three years before the 26th day of September, 1970, or to land which is not being used with the object of improvement of indigenous or local breed or cattle or sheep. The decision of the State government on the question whether or not any lands falls within this proviso shall be final and conclusive and shall not be called in question in any Civil Court.

(a) Land which is held, or to be acquired in any manner, by an industrial undertaking for a bona fide industrial or other non-agricultural use. In considering whether such land is so held or to be acquired, the State government shall have regard to the

following considerations, that is to say,

- (i) the extent and location of the land, if any, already held by the undertaking (including any land which it may already hold for industrial or non-agricultural use);
- (ii) the extent of land held by the person from whom it is to be acquired.

3. In the writ petition, the learned single Judge upheld the rejection on the ground that the Trust has not spent more than Rs. 200/-and since this amount did not comprise major portion of the income from the land, it is not entitled to exemption. The learned Single Judge further held that Section 47(2) of the Act contemplates an inquiry whether the Trust is entitled to be exempted and only where it is found that it is entitled to exemption, the question of compliance with an undertaking would arise.

4. Mr. Sohoni, the learned Counsel for the Appellant, submitted that the authority has committed an error in ignoring the plain terms of the section, which contemplates that a major portion of the income from the land of the Trust shall be spent on education or medical relief or both within a period of two years "from the date of publication of the order granting exemption". According to the learned Counsel, since no order granting exemption was made, it was not legal for the authority to take into account the fact that a major portion of the income was not spent on education or medical relief. Mr. Sohoni, the learned Counsel for the Appellant, further submitted that the learned single Judge fell into error in upholding the decision of the authority. There is no dispute that the objects of the Trust are as follows:

- (i) to supervise the property of the trust;
- (ii) to conduct the religious activities;
- (iii) to continue the Akhand Nanddeep; and
- (iv) balance funds permitting to spend on education and public health

A reading of Clause (iv) above does not require the Trust to spend a major portion on education and public health but it requires to spend only balance funds remaining after the objectives mentioned earlier are fulfilled. It is, thus, clear that the said Trust cannot be considered to be a Trust holding the land, a major portion or income of which is to be appropriated for the purposes education or medical relief. The question, however, is whether such a Trust is not entitled to exemption and whether in all circumstances of the case, the application of the Appellant-Trust has been correctly rejected.

5. Sub-section (2) of Section 47 of the Act clearly provides that;

- (a) only the lands mentioned therein may be exempted and those lands are only lands of public trust or wakf, held before 26th day of September, 1970 the major

portion of income of which is appropriated for the purposes of education or medical relief or both or where the major portion of the income of the land is not so appropriated but undertaking in the prescribed form is given, within a period of two years from the date of publication of the order granting exemption.

(b) land held for stud farm or, panjrapole or gaushala before 26th September, 1970

(bb) land held by public limited company, a public trust or a wakf for the purpose of breeding of cattle or sheep before 26th September, 1970.

6. The provision requires the Government to consider granting of exemption after such an enquiry as it deems fit and make an order of exemption in the Official Gazette on such terms and conditions as may be specified in the order. The purpose of Clause (a) above is clearly to enable the Government to exempt the lands belonging to the public trusts before 26th September, 1970, the major portion of the income of which is appropriated for the purposes medical education or relief. However, if the income is not so appropriated, a public trust is still entitled to seek exemption if it gives an undertaking within six months from the date of commencement which is the 2nd October, 1975 or such further period that a major portion of the income shall be so appropriated for the purposes of education or medical relief within two years from the date of publication of the order granting exemption.

7. In the present case, the State Government lost sight of the fact that the period, during which the major portion of the income of such land must be appropriated for the purposes mentioned in the Section in accordance with the undertaking, is two years from the date of order granting exemption and that as a fact there is no order granting exemption. It was not permissible for the State Government to reject the application for exemption on the ground that the trust had not spent a major portion of the income from the lands for medical relief and education since it gave an undertaking. The very period of undertaking is to enable the State Government to consider granting exemption even in respect of the land where the major portion of income is not so appropriated for education or medical relief, which is evident from the words "where the major portion of income is not so appropriated". An undertaking thus enables the land holder to promise the Government that major portion of the income will be appropriated for the purposes specified in the section, if exemption is granted.

8. The rejection of application for exemption on the ground that after the undertaking was furnished by the Appellant, it had not spent the major portion on the specified purposes, is not in accordance with the intent and purport of Section 47(2) of the Act. The Section clearly requires appropriation of the major portion of the income of such land for the specified purposes "within a period of two years from the date of publication of the order granting exemption".

9. We find that the view of the learned Single Judge that the undertaking was not complied with and, therefore, the exemption was rightly rejected is not in accordance with law. We may add that this does not mean that a public Trust is free to breach the undertaking even if it is given but that the Trust is bound under the undertaking to divert a major portion of its income for the specified purpose only after it has been exempted. It would be very unfair to have a Trust change its objects and divert a major portion of its income for specific purpose and then to have its application for exemption rejected.

10. In the result, we are of the view that the appeal deserve to be allowed and it is accordingly allowed. The order of the State Government is quashed and set aside. The matter is remanded back to the appropriate authority for considering the question of exemption of the Appellant's land, in accordance with the provisions of Section 47(2)(a) of the Act.

The Letters Patent Appeal is allowed in above terms. No order as to costs.