

A MAHANT RAMSWARUP GURU CHHOTE BALAKDAS

v.

MOTIRAM KHANDU PATIL & ORS.

September 26, 1967

B

[J. C. SHAH AND J. M. SHELAT, JJ.]

Bombay Public Trusts Act, 1950 as amended by Act 6 of 1960, s. 28 and Schedule AA—Certain areas of Madhya Pradesh transferred to Maharashtra—Trusts registered under Madhya Pradesh Public Trusts Act, 1951 to be treated under s. 28 as registered under Bombay Act—Benefit of s. 28 whether available to trust administered in Madhya Pradesh only a small portion of whose property is situated in Maharashtra.

C Section 32(1) of the Bombay Tenancy and Agricultural Lands Act 1948 as amended by Act XIII of 1956 provides that on the first day of April 1957 every tenant shall subject to certain provisions and exceptions be deemed to have purchased from his landlord the land held by him as a tenant. Section 88B provides an exception in favour of trusts which are or are deemed to be registered under the Bombay Public Trusts Act, 1950 when the Collector after enquiry certifies to that effect. After the territorial changes made by the States Re-organisation Act 1956 and the further changes made in 1960 certain territories of the then State of Bombay were excluded and certain other areas were brought into the new State of Maharashtra. Thereafter the Bombay Public Trusts (Unification and Amendment) Act, 1960 was passed, amending the Act of 1950. Before this amendment, s. 28 of the Act provided that all public trusts registered under any of the enactments specified in Schedule A thereto shall be deemed to have been registered under the Act from the date on which the Act was applied to them. By the amendment Schedule AA was added to the Act and when read with s. 28 the effect thereof was that the trusts registered under the Madhya Pradesh Act 1951 were deemed to have been registered under the Bombay Act.

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G The appellant in the present case was the mahant of a public and religious trust which was administered at Burhanpur, Madhya Pradesh. The bulk of its properties were in Burhanpur but three pieces of land lay in the new State of Maharashtra. The appellant relying on the amended s. 28 of the Bombay Public Trusts Act and s. 88B of the Bombay Tenancy and Agricultural Lands Act sought exemption from the operation of s. 32 of the latter Act. The matter having been decided against him by the High Court at Bombay, he appealed by certificate to this Court.

H **HELD:** Though s. 28 of the Bombay Public Trusts Act is couched in general terms it cannot mean that all trusts registered under the Madhya Pradesh Act are to be deemed to be registered under the Bombay Act irrespective of whether they are still situate in Madhya Pradesh and are liable to be administered under the Madhya Pradesh Public Trusts Act, 1951. The Act is intended to apply only to those trusts which as a result of the reorganisation of the State have come within the State of Maharashtra and to which the Bombay Act did not apply. [645B-D]

In the present case there was no dispute that the trust was administered at Burhanpur and the bulk of the properties, except the three pieces of land situate in Maharashtra lay in Madhya Pradesh. The fact that a part of its property was situate in Maharashtra State, though the trust was within Madhya Pradesh State, would not mean that the trust would be governed partly by the Madhya Pradesh Act and partly by the Bombay Act. Such a division of the Trust and its administration was not contemplated by either of the two Acts. The present trust did not therefore fall within the ambit of s. 28 and was not one of those trusts which could be deemed to be registered under the Bombay Act. Consequently it was also not a trust which fulfilled the conditions of s. 88B of the Bombay Tenancy and Agricultural Lands Act and the appellant could not be said to be entitled to the certificate under that section. [645F-H]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 82 of 1965.

Appeal from the judgment and order dated December 11/12, 1962 of the Bombay High Court in Special Civil Application No. 259 of 1962.

O. P. Malhotra, P. C. Bhartari and O. C. Muthur, for the appellant.

The respondent did not appear.

The Judgment of the Court was delivered by

Shelat, J. This appeal by certificate is directed against the judgment of the High Court at Bombay dated 11/12-12-1962 in Writ Petition 259 of 1962.

The appellant is the mahant of a public and religious trust called Kabir Nirnay Mandir. The trust is being administered at Burhanpur, Madhya Pradesh and the bulk of its properties is situate there, except three pieces of land at Vadhai, a village in Dhulia District. Respondent 1 is the tenant of two out of these three pieces of land situate at Vadhai. The question in this appeal is whether the appellant can apply and obtain an exemption certificate under sec. 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as the Act).

The Act was originally passed in 1948 but was drastically amended by Amendment Act, XIII of 1956 which came into force on August 1, 1956. The Amendment Act inducted into the Act *inter alia* secs. 32 to 32R and secs. 88A to 88D. Secs. 32 to 32R deal with purchase of land by tenants. Sub-section 1 of sec. 32 provides that on the first day of April 1957, *i.e.*, the tillers' day, every tenant shall, subject to the other provisions of this section and the provisions of the next succeeding sections, be deemed to have purchased from his landlord the land held by him as a tenant. In certain cases the said date, *viz.*, April 1, 1957 has been postponed but we are not concerned in this appeal with

those provisions nor with any such postponed date. Secs. 88A to 88C exclude the operation of secs. 32 to 32R to land specified therein. Section 88B *inter alia* provides:—

A “Nothing in the foregoing provisions except sections 3, 4B, 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

B (b) to lands which are the property of a trust or an institution for public religious worship.”

The proviso to the sub-section reads as follows:—

“Provided that

c (i) such trust is or is deemed to be registered under the Bombay Public Trust Act, 1950, and
(ii) the entire income of such lands is appropriated for the purpose of such trust.”

Sub-section 2 of section 88B provides that

“for the purpose 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.”

Thus for eligibility for an exemption certificate three conditions have to be satisfied: (1) that the land in question is the property of a trust or an institution for public religious worship, (2) that

E the trust is or is deemed to be registered under the Bombay Public Trusts Act, 1950, and (3) that the entire income of such lands is appropriated for the purposes of such trust. There is no dispute with regard to conditions (1) and (3) and the only controversy is whether condition 2 is satisfied. If all the three conditions are satisfied and a certificate is obtained by the trust under sub-section 2 of sec. 88B, secs. 32 to 32R would not apply to the land belonging to such trust and the tenant of such land cannot be regarded a deemed purchaser under the Act.

The contention of respondent 1, the tenant is that though conditions 1 and 3 are satisfied, the Trust situate as it is at Burhanpur outside the Maharashtra State cannot be deemed to be registered under the Bombay Public Trusts Act. The Bombay Public Trusts Act was passed in 1950 by the legislature of the then State of Bombay and its object as stated in its preamble is to regulate and to make better provision for the administration of public religious and charitable trusts in the State of Bombay. Sec. 1(3) provides that the Act shall come into force at once; but the provisions thereof shall apply to a public trust or any class of public trusts on the date specified in the notification under sub-section (4). Sub-section 4 provides that the State Government may by notification specify the date on which the provisions of the Act shall apply to any public trust or any class of public trusts and different

dates may be specified for such trusts in different areas. Under sections 18 and 19 a trustee of a public trust, to which the Act has been applied, is obliged to make an application for registration of the public trust giving in such application the information specified therein. Under sec. 19, the Deputy or the Assistant Charity Commissioner appointed under the Act has to make an inquiry in the prescribed manner for ascertaining the various matters set out therein. On completion of such inquiry and on its findings being recorded the Deputy or the Assistant Charity Commissioner has under sec. 21 to make entries in the register kept under sec. 17 in accordance with the findings recorded by him under sec. 20 or if appeals are preferred in accordance with the final decision of the competent authority provided by the Act, and such entries are made conclusive subject to the provisions of the Act or to any change recorded under the provisions therein after following. Before its amendment in 1960 sec. 28 provided that all public trusts registered under any of the enactments specified in Schedule A thereto shall be deemed to have been registered under the Act from the date on which the Act is applied to them. Schedule A sets out those Acts which are not relevant for the purpose of this appeal. As a result of reorganisation of the then Bombay State and the territorial changes made in 1956 and 1960 certain areas were excluded and certain other areas were brought into the new State of Maharashtra. The legislature of that State therefore amended sec. 28 by sec. 15 of the Bombay Public Trusts (Unification and Amendment) Act, 6 of 1960. A new Schedule amongst other things—viz., Schedule AA, was added after Schedule A which included amongst other Acts the Madhya Pradesh Public Trusts Act, 1951. The effect of sec. 28 and the insertion of Schedule AA in the Act was that the trusts registered under the Madhya Pradesh Public Trusts Act, 1951, were deemed to have been registered under the Bombay Act. The amendment became necessary as new areas which originally formed part of the Madhya Pradesh State were brought into the Maharashtra State and the policy of the legislature was to save trusts already registered under the Madhya Pradesh Trusts Act, 1951 from having to be once again registered under the Bombay Act. The Amendment Act 1960 was brought into force as from January 1, 1961. By a notification dated January 31, 1961 issued under sec. 1(4) the Act was made applicable to certain kinds of trusts. It is not in dispute that the present trust is one of the kinds of trusts to which the Act was made applicable as from February 1, 1961. The said notification runs as follows:—

"In exercise of the powers conferred by sub-section (4) of the Bombay Public Trusts Act, 1950 ... the Government of Maharashtra specifies the 1st day of February 1961 to be the date on which the provisions of the said Act shall, ... apply to the following classes of public trusts ... in the State to which the Act does not already apply "

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A The question is whether sec. 28 can be said to apply to the present Trust. Though sec. 28 is couched in general terms it cannot mean that all trusts registered under the Madhya Pradesh Act are to be deemed to be registered under the Bombay Act irrespective of whether they are still situate in Madhya Pradesh and are liable to be administered under the Madhya Pradesh Public Trusts Act, 1951. The aforesaid notification itself makes this clear by using the words "shall ... apply to the following classes of public trusts ... in the State to which the Act does not already apply.....". These words indicate clearly that the Act is to apply to those trusts which as a result of the re-organisation of the State have come within the new State of Maharashtra and to which the Bombay Act did not apply. Therefore, the Act cannot apply and is not intended to apply to trusts which are still outside the State and within the Madhya Pradesh State. There can therefore be no doubt that such trusts in spite of the general language of sec. 28 would still be governed by and administered under the Madhya Pradesh Act. If sec. 28 were to be construed, as the appellant desires us to construe, there would be the anomalous position that the authorities under both the Acts can claim the right to supervise and control the administration and management of the trust properties. The curious result of such a construction would be that though the trust is situate and is administered at Burhanpur in Madhya Pradesh the authorities under the Bombay Act can claim to control its management.

E There is no dispute that the trust is administered at Burhanpur and the bulk of its properties, except the three pieces of lands situate in the District of Dhulia, are all situate in the Madhya Pradesh State. The fact that a part of its property is situate in Maharashtra State, though the trust is within Madhya Pradesh State, would not mean that the trust would be governed partly by the Madhya Pradesh Act and partly by the Bombay Act. Such a division of the Trust and its administration is not contemplated by either of the two Acts. It is therefore clear that the present Trust does not fall within the ambit of sec. 28 and is not one of those trusts which can be deemed to be registered under the Bombay Act. That being so, it is obviously not a trust which fulfils the second condition of s. 88B of the Bombay Tenancy and Agricultural Lands Act and the appellant cannot be said to be entitled to the certificate under that section.

F by the Madhya Pradesh Act and partly by the Bombay Act. Such a division of the Trust and its administration is not contemplated by either of the two Acts. It is therefore clear that the present Trust does not fall within the ambit of sec. 28 and is not one of those trusts which can be deemed to be registered under the Bombay Act. That being so, it is obviously not a trust which fulfils the second condition of s. 88B of the Bombay Tenancy and Agricultural Lands Act and the appellant cannot be said to be entitled to the certificate under that section.

G Agricultural Lands Act and the appellant cannot be said to be entitled to the certificate under that section.

The appeal is dismissed. There will be no order as to costs.

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G.C.

Appeal dismissed.