

MANIK VINAYAK PATHARE (DEAD)  
BY RASIK KARSANDAS MAKHECHA

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v.  
PANDURANG GANPAT THAKAR & ORS.

DECEMBER 20, 1986

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[P.N. BHAGWATI CJ., RANGANATH MISRA, V. KHALID,  
G.L. OZA AND M.M. DUTT, JJ.]

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*Bombay Tenancy and Agricultural Lands Act, 1948, Section 88B(1)(b), proviso thereto—Whether the introduction of conditions (i) and (ii) thereunder offends the provisions of Article 26 of the Constitution.*

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In order that the lands belonging to a Trust for an institution for public religious worship should be entitled to exemption from the operation of Sections 32 to 32R of the Tenancy Act, 1948, two conditions namely (i) that the Trust must be registered or deemed to be registered under the Bombay Public Trust Act, 1950; and (ii) that the entire income of the lands belonging to a Trust for an institution for public religious worship must be appropriated for the purposes of such a Trust who added under the proviso to section 36B(1)(b) of the Act. The challenge to the constitutional validity of the same was negatived by the Bombay High Court. Hence the appeals by special leave.

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Dismissing the appeals, the Court,

**HELD:** Sub-section 1(b) of section 88B of the Bombay Tenancy and Agricultural Lands Act, 1948 does not offend against Article 26 of the Constitution by reason of the introduction of conditions (i) and (ii) in the proviso to that sub-section. [869G-H]

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Both conditions (i) and (ii) do not in any way detract from the exemption granted under sub-section 1(b) of section 88B of the Act. Condition (i) merely introduces a requirement that the Trust must be registered or deemed to be registered under the Bombay Public Trust Act, 1950 and this requirement is introduced in order to ensure that the Trust is really and truly a trust which falls within the language of sub-section 1(b) of section 88B, namely, that it is genuinely a trust for an institution for public religious worship. If the Trust is registered or deemed to be registered under the Bombay Public Trust Act, 1950, that would afford incontrovertible proof of the fact that it is a trust for a charitable

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A or religious purpose. Condition (ii) requires that the entire income of the lands belonging to a Trust for an institution for public religious worship must be appropriated for the purposes of such Trust. If lands belonging to a trust for an institution for public religious worship are to be eligible for exemption under sub-section 1(b) of section 88B, it would be quite legitimate for the legislature to insist that the entire income of such lands must be appropriated for the purposes of such Trust. That would ensure that the trust is a genuine Trust for public religious worship and is not merely a facade for carrying out some other purposes. [869C-F]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2211 (N) of 1969.

C From the Judgment and Order dated 22/23.8.1968 of the Bombay High Court in S.C.A. No. 1418 of 1964.

V.N. Ganpule for the Appellant in C.A. No. 2211 of 1969.

D S.B. Bhasme, P.C. Kapur, V.N. Ganpule and S.K. Agnihotri for the Appellants in C.A. No. 1191 of 1970.

Nemo for the Respondents in C.A. No. 2211 of 1969.

E Vinod Bobde, D.N. Mishra and Ms. Sunita for the Respondents in C.A. No. 1191 of 1970.

Mrs. Urmila Sirur, for the Intervener.

The Judgment of the Court was delivered by

F **BHAGWATI, CJ.** The only question which arises in these appeals is whether sub-section 1(b) of section 88B is unconstitutional and void as offending Article 26 of the Constitution. The constitutional validity of sub-section 1(b) of section 88B is assailed on the ground that by reason of condition (i) in the proviso to this sub-section, sections 32 to 32 R of the Bombay Tenancy and Agricultural Lands Act 1948 (hereinafter referred to as the 'Tenancy Act') are made applicable to lands which are the properties of a Trust for an institution for public religious worship, if such Trust is not registered or deemed to be registered under the Bombay Public Trust Act, 1950 and the applicability of sections 32 to 32R of the Tenancy Act to such lands contravenes the right of the institution to own and acquire moveable and immovable property under Article 26 of the Constitution. The High

Court negatived this challenge urged on behalf of the petitioners. We are also of the view that this challenge must fail. It is not necessary to go into any detailed reasons for the purpose of holding that sub-section 1(b) of section 88B does not offend Article 26 of the Constitution on account of condition (i) in the proviso to that sub-section. This condition provides that in order that the lands belonging to a Trust for an institution for public religious worship should be entitled to exemption from the operation of sections 32 to 32R of the Tenancy Act, the Trust must be registered or deemed to be registered under the Bombay Public Trust Act, 1950. This condition does not in any way militate against the exception which is made in the main part of sub-section 1(b) of section 88B in favour of lands belonging to a Trust for an institution for public religious worship. It merely introduces a requirement that the Trust must be registered or deemed to be registered under the Bombay Public Trust Act, 1950 and this requirement is introduced in order to ensure that the Trust is really and truly a trust which falls within the language of sub-section 1(b) of section 88B, namely, that it is genuinely a trust for an institution for public religious worship. If the Trust is registered or deemed to be registered under the Bombay Public Trust Act, 1950, that would afford incontrovertible proof of the fact that it is a trust for a charitable or religious purpose. This condition does not, therefore, in any way detract from the exemption granted under sub-section 1(b) of section 88B.

So also, condition (ii) introduced in the proviso does not detract from the exemption, since all that it requires is that the entire income of the lands belonging to a trust for an institution for public religious worship must be appropriated for the purposes of such Trust. If lands belonging to a trust for an institution for public religious worship are to be eligible for exemption under sub-section 1(b) of section 88B, it would be quite legitimate for the legislature to insist that the entire income of such lands must be appropriated for the purposes of such Trust. That would ensure that the trust is a genuine Trust for public religious worship and is not merely a facade for carrying out some other purpose.

We are, therefore, of the view that sub-section 1(b) of section 88B does not offend against Article 26 of the Constitution by reason of the introduction of conditions (i) and (ii) in the proviso to that sub-section. These appeals must fail on this short ground. They are accordingly dismissed but without any order as to costs.