Shri Kalanka Devi Sansthan

Vs

The Maharashtra Revenue Tribunal, Nagpur and Others

Civil Appeal No. 862 of 1966

(CJI J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

19.08.1969

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the High Court of Bombay dismissing a petition under Article 227 of the Constitution which had been filed by appellant Sansthan.

2. The appellant is a private religious Trust, which is managed by Laxman Anant Mulay who is described as a Wahiwatdar (Manager). The main source of income for performing the several acts including the daily worship of the family deity (Shri Kalanka Devi) is stated to be derived from endowed agricultural land. Respondent No. 4 is the tenant in field survey No. 94 with an area of 30 acres 8 Gunthas in Mouza Malrajura, district Akola. On January 30, 1961, a notice was served on behalf of the appellant on respondent No. 4 under the provisions of Section 38 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958, hereinafter called the Act. It was mentioned in the notice that an earlier notice under Section 9(1) of the Berar Regulation of Agricultural Lease Act had been served in the year 1955 that the Sansthan required the aforesaid field for personal cultivation and, therefore, he should give up possession. Those proceedings were pending but a notice under Section 38 of the Act was being given to terminate the tenancy without prejudice to the previous proceedings. As the notice was not complied with an application was filed on behalf of the appellant under Section 36 of the Act for possession which was opposed by respondent No. 4. The Naib-Tehsildar rejected the application on the ground that the Sansthan was not a land-holder who could cultivate the land personally. His order was confirmed by the Sub-Divisional Officer and by the Maharashtra Revenue Tribunal to whom appeals were taken. The appellant ultimately filed a petition under Article 227 of the Constitution before the High Court which, as stated before, was dismissed.

3. The only point which has to be determined is whether the Sansthan could taken advantage of the provisions contained in the Act by which possession can be claimed from the tenant on the ground that it is required for personal cultivation. Section 2(12) of the Act defines the words "to cultivate personally" in the following manner :

> Section 2(12) "to cultivate personally" means to cultivate on one's own account -
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> (i) by one's own labour, or
>
> (ii) by the labour of any member of one's family, or

(iii) under the personal supervision of one-self or of any member of one's family by hired labour or by servants on wages payable in cash or kind but not in crop share;

Explanation I. - A widow or minor or a person who is subject to any physical or mental disability, or a serving member of the armed forces shall be deemed to cultivate the land personally if it is cultivated by her or his servants or by hired labourer;

Explanation II. - ....."

According to Section 2(22) the "physical or mental disability" means physical or mental disability by reason of which the person subject to such disability is incapable of cultivating land by personal labour or supervision. The word "tenant" is defined by Section 2(32) as meaning a person who holds land on lease including a person who is deemed to be a tenant under Sections 6, 7 or 8 a person who is a protected lessee or occupancy tenant. It is provided that the word "landlord" shall be construed accordingly. Section 38 deals with termination of tenancy by landlord for cultivating land personally. It says that after giving notice to a tenant in writing at any time on or before February 15, 1961 and making an application for possession under section 36 on or before March 31, 1961, the landlord may terminate the tenancy other than an occupancy tenancy if the landlord bona fide requires the land for cultivating it personally. Sub-section (3) gives the conditions subject to which the tenancy can be terminated.

4. Now it is well known that when property is given absolutely for the worship of an idol it vests in the idol itself as a juristic person. As pointed out in Mukherjea's Hindu Law of Religious and Charitable Trust at pp. 142-143, this view is in accordance with the Hindu ideas and has been uniformly accepted in a long series of judicial decisions. The idol is capable of holding property in the same way as a natural person. "It has a juridical status with the power of suing and being sued. Its interests are attended to by the person who has the deity in his charge and who is in law its manager with all the powers which would, in such circumstances, on analogy, be given to the manager of the estate of an infant heir". The question, however, is whether the idol is capable of cultivating the land personally. The argument raised on behalf of the Appellant is that under Explanation I in Section 2(12) of the Act a person who is subject to any physical or mental disability shall be deemed to cultivate the land personally if it is cultivated by the servants or by hired labourer. In other words an idol or a Sansthan that would fall within the meaning of the word "person" can well be regarded to be subject to a physical or mental disability and land can be cultivated on its behalf by servants or hired labourers. It is urged that in Explanation (1) the idol would be in the same position as a minor and it can certainly cultivate the land personally within the meaning of Section 2(12). It is difficult to accept the suggestion that the case of the appellant would fall within Explanation (1) in Section 2(12). Physical or mental disability as defined by Section 2(22) lays emphasis on the words "personal labour or supervision". As has been rightly pointed out in Shri Kesheoraj Deo Sansthan, Karanja v. Bapurao Deoba and Others ((1964) Mah LJ 589, 593) in which an identically similar point came up for consideration, the dominating idea of anything done personally or in person is that the thing must be done by the person himself and not by or through some one else. In our opinion the following passage in that judgment at page 593 explains the whole position correctly :

"It should thus appear that the legislative intent clearly is that in order to claim a cultivation as a personal cultivation there must be established a direct nexus between the person who makes such a claim, and the agricultural processes or activities

> carried on the land. In other words, all the agricultural operations, though allowed to be done through hired labour or workers must be under the direct supervision, control, or management of the landlord. It is in that sense that the words "personal supervision" must be understood. In other words, the requirements of personal supervision under the third category of personal cultivation provided for in the definition does not admit of an intermediary between the landlord and the labourer, who can act as agent of the landlord for supervising the operations of the agricultural worker. If that is not possible in the case of one landlord, we do not see how it is possible in the case of another landlord merely because the landlord in the latter case is a juristic person."

In other words the intention is that the cultivation of the land concerned must be by natural persons and not by legal persons.

5. It has next been contended that in the provision of the Berar Regulation of Agricultural Leases Act, 1951, public trusts of charitable nature were included among those who could claim possession from a tenant on the ground of personal cultivation. It is not possible to see how the provisions of a repealed statute which was no longer in force, after the enactment of the Act could be of any avail to the appellant. The decision in Ishwardas v. Maharashtra Revenue Tribunal and Others ((1968) 3 SCR 441), has also been referred to by the counsel for the appellant. In that case it was said that under Section 2(18) of the Bombay Public Trusts Act a trustee has been defined as meaning a person in whom either alone or in association with other persons the trust property is vested and includes a manager. In view of this definition the properties of the trusts vest in the managing trustee and he is the landlord under Clause 32 of Section 2 of the Act. As he is the landlord, he can ask for a surrender from the tenant of the lands of the trust "to cultivate personally". In the present case it is common ground that the Sansthan is a private trust and is not governed by the provisions of the Bombay Public Trusts Act. The manager or the Wahiwatdar of the Sansthan cannot, therefore, fall within the definition of the word "trustee" as given in Section 2(18) of that Act. It may be mentioned that in Ishwardas' case (supra) the Court refrained from expressing any opinion on the question whether a manager or a Shebait of the properties of an idol or the manager of the Sansthan can or cannot apply for surrender by a tenant of lands for personal cultivation. The distinction between a manager or a Shebait of an idol and a trustee where a trust has been created is well recognised. The properties of the trust in law vest in the trustee whereas in the case of an idol or a Sansthan they do not vest in the manager or the Shebait. It is the deity or the Sansthan which owns and holds the properties. It is only the possession and the management which vest in the manager.

6. It has lastly been contended that the relevant provisions of the Act which have the effect of debarring the appellant from claiming possession for personal cultivation violate the provisions of Articles 14 and 19(1)(f) of the Constitution. It is urged that discrimination is writ large between animate and juristic persons who fall within the definition of the word "person". Such a contention, however, cannot be entertained in view of Article 31-A of the Constitution. The Act had received the assent of the President and is rendered immune from attack or challenge on the ground of violation of Articles 14 and 19 of the Constitution. In Shri Mahadeo Paikaji Kolhe Yavatmal v. The State of Bombay ((1962) 1 SCR 733) the constitutional validity of the Act itself was canvassed but the challenge failed. Similarly the validity of the Bombay Tenancy and Agricultural Lands Amendment Act, 1958, as applied to Vidarbha Region and Kutch Area was upheld in Sri Ram Ram Narain Medhi v. The State of Bombay. ((1959) Supp 1 SCR 489).

7. The appeal consequently fails and it is dismissed with costs.

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