

Manik Vinayak Pathare (Dead) By Rasik Karsandas Makhecha

Vs

Pandurang Ganpat Thakar and Others

Civil Appeal Nos. 2211 (N) of 1969 and 1191 of 1970

(CJI P. N. Bhagwati, E. S. Venkataramiah, V. Khalid, G. L. Oza, S. Natarajan JJ)

20.12.1986

JUDGMENT

BHAGWATI, C. J. :-

1. The only question which arises in these appeals is whether sub-section (1) (b) of Section 88-B (Bombay Tenancy and Agricultural Lands Act, 1948) is unconstitutional and void as offending Article 26 of the Constitution. The constitutional validity of sub-section (1) (b) of Section 88-B 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 32-R of the Tenancy Act to such lands contravenes the right of the institution to own and acquire movable and immovable property under Article 26 of the Constitution. The High Court negated 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 88-B 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 32-R 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 88-B 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 88-B, 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 88-B.

2. 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 88-B, 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.

3. We are, therefore, of the view that sub-section (1) (b) of Section 88-B 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.

</html