SUPREME COURT OF INDIA

Najeeb

Vs.

State of Kerala

C.A.No.1910 of 2002

(Arijit Pasayat CJ. P.Sathasivam and Aftab Alam JJ.)

03.03.2008

JUDGMENT

Arijit Pasayat, J.

1. Challenge in this appeal is to the judgment of the learned Single Judge of the Kerala High Court allowing the Civil Revision Petition.

2. Respondent-State of Kerala filed a Civil Revision Petition under Section 103 of the Kerala Land Reforms Act, 1963 (in short the 'Act'). Challenge in the revision was to the order of the Taluk Land Board, dated 22.2.1991 holding that the declaring was liable only to surrender an extent of 0.26.250 acres of land. Stand of the State was that the property held by the so-called Wake of which the declaring was Muthavalli was to be included while determining the extent of land held by the predecessors of the appellant.

3. Background facts in a nutshell are as follows:

> "The predecessor of the appellants (hereinafter called the declaring) filed a statement under Section 85 of the Act. After an enquiry the Taluk Land Board determined that the declaring held an extent of 2.5.700 acres of land in excess of the ceiling area. An extent of 2.55 acres was taken possession of. On the ground that the declaring had failed to disclose certain other lands held by him, the Taluk Land Board reopened the matter and after hearing the declaring passed a revised order dated 13.12.1977 holding that a further extent of 5.42.500 acres of land is also liable to be surrendered by the declaring. The declaring filed C.R.P.4053 of 1977 before the High Court. The High Court held that certain lands acquired by the declaring after 1.1.1970 were also sought to be included by the Taluk Land Board and the same could not be done. Apparently, the High Court took the view that such subsequent acquisitions could be considered only in a proceeding initiated under Section 87 of the Act. Deleting the extent of land acquired after 1.1.1970 the High Court directed the Taluk Land Board to consider whether an extent of 3.13 acres allegedly set apart for a Madrassa was liable be included or was liable to be exempted on the ground that it was a Wakf property. The High Court gave an opportunity to the declaring to establish that the income from the said extent wholly went to the Wakf and. not to the personal account of the declaring. Thus clarifying that in the present proceeding the Taluk Land Board was only concerned with the land held by the declaring as on 1.1.1970 the High Court directed a re-examination of the claim regarding 3.13 acres of land. The Taluk Land Board thereafter passed an order on 13.12.1982 holding that the declaring had not produced any reliable evidence to show that the income from properties allegedly set apart for the Madrassa went to the Wakf except two registers said to be the account books of income and expenditure which was found to be unreliable. The Taluk Land Board held that the registers were seen to be written up recently and there was nothing to

show that those accounts related to the properties in question. The Taluk Land Board also entered a finding that its enquiry revealed that only a share of the income goes to the Madrassa and the major portion goes to the personal account of the declaring. The Taluk Land Board therefore held that in the absence of evidence, properties could not be deleted from the account of the declaring. The Taluka Land Board thereupon directed that the declaring was bound to surrender an extent of 2.93.500 acres of land. The declaring filed another Revision before the High Court as C.R.P.3618 of 1982. Pending the revision the declaring died and his legal representatives were imp leaded as additional petitioners. By order dated 7.7.1989 the High Court held that a fresh enquiry as ordered by it has not been conducted by the Taluk Land Board regarding the claim of exclusion on the ground of the lands being dedicated to a Wake and the reliance on the report of the authorized officer which the declaring alleged was prepared without notice to him was not sufficient to disallow the claim of the of the declaring. The contention of the declaring that the account books produced by him establish his case noticed by the High Court which directed the Taluk Board to reconsider the question whether the entire income from the property in dispute was appropriated for the benefit of the Wake and whether the property was liable to be exempted under Section 81(1) (t) (iii) of the Act. Thereafter the Taluk Land Board did not consider whether the declaring has adduced any evidence to establish the acceptability of the books of account and whether they are acceptable. It simply referred to the report of an authorized officer to the effect that a Madrassa was functioning, which was one registered with the Kerala Wake Board and that the same was being managed by its Muthavalli. It also noticed that according to the report, the income from certain lands having an extent of 2.67.250 acres was being used for the purpose of the Madrassa. Report of the authorized officer was accepted and the Taluk Land Board proceeded to exempt 2.67.250 acres of land under Section 81(1) (t) (iii) of the Act. Thus the Taluk Land Board held that the declaring was liable to surrender only an extent of 0.26.250 acres of land."

4. Stand of the State before the High Court was that burden to show that the land was taken in by the order, inclusion of which has been upheld by the High Court earlier, was on the declaring who has failed to discharge that burden. It was further submitted that the accounts were clearly written up at a stretch and there was no material to show that income from the land was wholly spent for the benefit of the Wake. The High Court with reference to Section 81(1) (t) (iii) of the Act held that it had to be shown that the land was owned or held by a public trust which expression included a Wake. The proviso provides that the exemption is available to a public trust only if the entire income of such lands is appropriated for the trust concerned. It was concluded that there was nothing to show that these lands were owned or held by a public trust on the appointed day, i.e. 1.1.1970 to which date exemption under Section 81 relates. It was further held that the declaring failed to prove that the land in question qualified for the exemption. Accordingly, as noted above, Civil Revision was allowed.

5. Learned counsel for the appellants submitted that the basic approach of the High Court was wrong.

6. Reference was made to Section 81(1) (t) (iii) which relates to exemption. The proviso appears in the Chapter III which deals with the exemption. In the instant case, the Wake was not claiming any exemption. Therefore, the requirement of Section 81(1) (t)(iii) could not have been pressed into service by the High Court. The State's stand in this regard was thoroughly misconceived. It was also pointed out that in the earlier round of litigation; it has been clearly held that the Wake in question was a public trust. Conclusions to the contrary made by the High Court are clearly unsustainable.

7. Learned counsel for the respondent-State supported the order.

8. Section 81(1) (t) (iii) from which the High Court has placed reliance reads as follows:

> "81 Exemption: - (1) the provisions of this Chapter shall not apply to (t) Lands owned or held by
> (i) A University established by law; or
> (ii) A religious, charitable or educational institution of a public nature; or
> (iii) A public trust (which expression shall include a wake): Provided that
> (iv) The entire income of such lands is appropriated for the University, institution or trust concerned; and
> (v) where the University, institution or trust come to hold the said lands after the commencement of this Act, the Government have certified previously that such lands are bona fide required for the purposes of the University, institution or trust, as the case may be;"

9. It is a part of Chapter III of the Act. As rightly contended by learned counsel for the appellants it relates to exemption. The proviso has no role to play while dealing with the question whether the land was to be included in the holding of the declaring. The question of exemption arises only when land in excess of the permissible limit is held by a public trust and exemption is sought for on the basis of what is provided in the proviso (i) or (ii). It is not the case of the State that the Wakf was required to be registered. This issue was gone into by the High Court in the earlier round in Civil Revision no.4053/77-B. It was, inter-alia, held as follows:

> "Similarly another extent of 3.13 and odd acres was added on to the petitioner's account by holding that certain properties set apart for Madrasa in 1123 M.E. and others subsequently acquired were really being enjoyed by the petitioner. The main reason stated for rejecting the plea that the property belonged to a Wake is that the Wake has not been registered under Wakf Act. I have not been taken through any provisions of the Wake Act which lays down that unless registered under that Act, any declaration dedicating property in the manner required by the Mohammedan law cannot be given effect to. Counsel for the petitioner submits that the subsequent acquisitions are in the name of the Wake itself, and that the Wake has also been subsequently registered. The approach made by the Taluk Land Board is erroneous; it cannot be presumed that there is no Wake at all because there is no Registration under the Act. The Taluk Land Board may probably be justified in enquiring as to whether the income from the property goes to the Wake, or to the personal account of the declaring. As I said, the matter requires re-examination. This finding is therefore set aside and the Taluk Land Board is directed to reconsider the question in accordance with law."

10. This Court by order dated 20.4.2001 had directed the appellants to file an affidavit along with documents to show that the property stands in the name of the Madrassa. The documents have been filed which clearly show that the settlement deeds were executed in the years 1952, 1958, 1962 and 1966. Authenticity of the documents has not been questioned.

11. Looked from any angle, the impugned order is clearly unsustainable in view of the position in law highlighted above.

12. The appeal is allowed but in the circumstances without any order as to costs.