

# SUPREME COURT OF INDIA

Janardan Dagdu Khomane

Vs.

Eknath Bhiku Yadav

C.A.No.2607 of 2013

(R.Banumathi and Indira Banerjee,JJ.,)

18.09.2019

## JUDGMENT

### **Indira Banerjee,J.,**

1. This appeal is against a final judgment and order dated 6th February, 2006, whereby a Division Bench of Bombay High Court allowed Writ Petition No.1442 of 1987 filed by the Respondent Nos.1,2 and 3, and directed the concerned authorities to hold proceedings under Section 32(G) of the Bombay Tenancy and Agricultural Lands Act, 1948 [hereinafter referred to as "the 1948 Act" to fix the purchase price of 6 acres and 19 gunthas of lands at Pimpli Village in the Baramati Taluk in Pune district, hereinafter referred to as the "said land".

2. The appellants are the trustees of Shree Maruti Deo Trust Pimpli Limtek, registered as a public trust under the Bombay Public Trusts Act, 1950, hereinafter referred to as the "Public Trusts Act". By amendment in 2012, the Public Trusts Act was renamed as "The Maharashtra Public Trusts Act, 1950". It is the case of the appellants that, since time immemorial, the said land has belonged to the Maruti Dev Temple. The said land is classified in the revenue records as Class III Devasthan Inam land belonging to the deity Maruti Dev. The suit property, according to the appellants, belongs to an institution of public religious worship.

3. There cannot be any dispute that the suit land belonged to the Devasthan. According to the appellants, initially in 1922, one Sitram Narayan Deshpande was put in possession of the suit land in view of the service rendered by him to the temple. Later, the land was let out to the forefathers of respondent nos. 1 to 4.

4. The respondent nos. 1 to 4, claim to be the tenants of the respondent nos. 5 and 6. The respondent nos. 1 to 4 claim to have been in possession of the said land on 1.4. 1957 i.e. the "Tillers Day" under the 1948 Act, now known as the Maharashtra Tenancy and Agricultural Lands Act. The proforma respondents in this appeal, being the trustees of the Trust, were deleted from the array of parties by an order of this Court dated 13.2.2013.

5. The 1948 Act was amended by Bombay Act No. 15 of 1957, Bombay Act No. 38 of 1957 and Bombay Act No. 63 of 1958. The relevant amended sections provide:

"32. Tenants deemed to have purchased land on tillers' day (1) On the first day of April 1957 (hereinafter referred to as "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, free of all encumbrances subsisting thereon on the said day, the land held by him as tenant, if:-

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates land leased personally; and

(i) the landlord has not given notice of termination of his tenancy under section 31; or

(ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the land; or

(iii) the landlord has not terminated his tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March, 1957 under section 29 for obtaining possession of the lands:

32G. Tribunal to issue notices and determine price of land to be paid by tenants. (1) As soon as may be after the tillers' day the Tribunal shall publish or cause to be published a public notice in the prescribed form in each village within its jurisdiction calling upon:-

(a) all tenants who under section 32 are deemed to have purchased the lands,

(b) all landlords of such lands, and

(c) all other persons interested therein, to appear at it on the date specified in the notice. The tribunal shall issue a notice individually to each such tenant, landlord and also, as far as practicable, other persons calling upon each other to appear before it on the date specified in the public notice.

(2) The Tribunal shall record in the prescribed manner the statement of the tenant whether he is or is not willing to purchase the land held by him as tenant

(3) Where any tenant fails to appear or makes a statement that he is not willing to purchase the land, the Tribunal shall by an order in writing declare that such tenant is not willing to purchase the land and that the purchase is ineffective:

Provided that, if such order is passed in default of the appearance of any party, the Tribunal shall communicate such order to the parties and any party on whose default the order was passed may within 60 days from the date on which the order was communicated to him apply for the review of the same.

(4) If a tenant is willing to purchase, the Tribunal shall, after giving an opportunity to the tenant and the landlord and all other persons interested in such land to be heard and after holding an inquiry, determine the purchase price of such land in accordance with the provisions of section 32H and of sub-section (3) of section 63A:

Provided that, where the purchase price in accordance with the provisions of section 32H is mutually agreed upon by the landlord and the tenant, the Tribunal after satisfying itself in such manner as may be prescribed that the tenants consent to the agreement is voluntary may make an order determining the purchase price and providing for its payment in accordance with such agreement.

(5) In the case of a tenant who is deemed to have purchased the land on the postponed date the Tribunal shall, as soon as may be, after such date determine the price of the land".

6. It is the case of the appellants, that Section 88B, inserted by amendment in the 1948 Act by Bombay Act No.38 of 1957, exempts land which is the property of a trust for, inter alia, educational purposes or an institution for public religious worship, from certain provisions of the 1948 Act including Section 32 and sub-sections 32A to 32 R of the said Act, provided that such trust is or is deemed to be registered under the Public Trusts Act, and the entire income of such lands is appropriated for the purposes of such Trust.

7. The appellants contend that Section 32 has no application to land held by a Public Trust. Therefore, a tenant on land held by a Public Trust does not become purchaser either on "Tillers day" or on any subsequent date. Counsel appearing on behalf of the appellants has emphatically argued that the Maruti Dev Temple Devasthan has, all along been a Public Trust.

8. On 18.9. 1983, the Gram Sabha decided to get the Trust registered as a Public Trust. Accordingly, an application no. 1484/83 was filed before the Deputy Charity Commissioner by one of the trustees, for registration of Shri Maruti Dev Trust, Pimpli, Limtek, under Section 19 of the Public Trusts Act. On 8.8.1984, the Trust came to be registered under PTR No. A/1656 (Pune) after necessary enquiry.

9. Questioning the registration of the Trust, the respondent no.1, father of the respondent nos. 2 to 4, filed a Revisional Application No. 21 of 1985 before the Joint Charity Commissioner, Pune, who remanded the matter back to the Deputy Charity Commissioner, on the ground that no personal notice had been given to the concerned respondents.

10. On or about 9.7.1986, after registration of the Trust, the Trustee in Charge of the Trust, filed an application under Rule 52(1) of the Bombay Tenancy and Agriculture Land Rules, 1956 before the Collector for exemption of the said land under Section 88B of the 1948 Act. It appears that the Pune Archives recorded the land in question as Class III Devasthan Inam Land of the Village Pimpri, belonging to the Maruti Dev Trust, managed by Shri Narayan Deshpande, as per decision no. 196 dated 3.7.1858.

11. The Additional Collector, after holding enquiry under Section 88B (2) of the 1948 Act, issued a certificate dated 21.1.1987, certifying that the Trust is "an institution of public religious worship registered under the Bombay Public Trust Act". The certificate further certified that the Trust was eligible for exemption under Section 88B of the 1948 Act in respect of the land in question. The appellants assert that the certificate was issued after notice of inquiry to the respondents who were given the opportunity of cross-examining the Trustees.

12. On or about 13.3.1987, the respondent no.1 and father of respondent nos. 2 to 4, filed the above-mentioned writ petition being WP No. 1442 of 1987 in the Bombay High Court, challenging the validity of the exemption certificate.

13. Sometime in 1997, the respondent no.2 filed an Inquiry Application No. 2008 of 1997 for registration of a Trust consisting of new Trustees in the name of Shri Maruti Dev Trust.

14. The appellants contend that the Inquiry Application was misconceived and not maintainable since the respondent nos. 1 to 4, who claim to be the tenants in the suit property, could not seek registration of the Trust, as such a claim would be contrary to and inconsistent with their earlier claim of tenancy.

15. The Deputy Charity Commissioner, after considering the allegations and counter allegations of the respective parties in the Inquiry Application No. 1484 of 1983 and 2008 of 1997, passed an order dated 15.9.2001 holding that Maruti Dev Trust was already in existence and it was a Public Trust under the Public Trusts Act. Accordingly, Application no. 2008 of 1997, filed by the respondent was rejected. The Application No. 1484/1983 stood allowed.

16. Aggrieved by the order dated 15.9.2001, the respondent no. 1, father of respondent nos. 2 to 4, filed an Appeal No. 101/2001 before the Joint Charity Commissioner, Pune. The appeal was dismissed by the Joint Charity Commissioner by an order dated 5.7.2005, holding that the claim of the respondent to be the owner of the Trust property was adverse to the interest of the Trust. The existing Trustees were directed to take necessary steps for getting a scheme framed by the Competent Authority for proper administration of the Trust.

17. By the Judgment and order dated 6.2.2006 under appeal, the Division Bench of the Bombay High Court allowed writ Petition, being W.P. No. 1442 of 1987 filed by the

respondent no.1, father of the respondent Nos. 2 to 4, challenging the validity of the Exemption Certificate dated 21.1.1987 issued by the Collector, and quashed the impugned Exemption Certificate. The High Court held that it was not open to the Collector to grant a certificate of Exemption to the Trust as the land had vested in the writ petitioners on 1.04.1957. The High Court directed the authorities concerned to hold proceedings under Section 32 G of the 1948 Act to fix the purchase price at an early date.

18. The short question in this appeal is, whether the High Court was justified in quashing the Exemption Certificate issued by the Collector in terms of Section 88B of the 1948 Act in favour of the Trust, notwithstanding the fact that the suit property belonged to "an institution of public religious worship".

19. The High Court has allowed the writ petition, on the ground that the Trust was registered for the first time on 8.8.1984. The High Court held that as the Trust was not registered on 1.04.1957, i.e., Tillers' Day the tenants who were in possession of the said land on that day became deemed purchasers, and once the tenant became a deemed purchaser, the ownership of the land vested in him. The holders could not be divested of their ownership by subsequent registration of the Trust.

20. In allowing the writ petition, the High Court has relied upon two earlier decisions of the Bombay High Court, *Laxminarayan Temple vs. L.M. Chandore and Chhatrapati Charitable Devasthan Trust vs. Parisa Appa Bhoske and others*<sup>2</sup>.

21. The High Court found that the 1948 Act, as initially enacted, granted protection against eviction to tenants of agricultural lands. It did not provide for any automatic purchase of the lands in occupation of tenants. Upon insertion of Section 32 to 32 R along with some other Sections by amendment of the 1948 Act by Bombay Act No.XIII of 1957, subject to certain exceptions, tenants who remained in possession on Tillers day i.e., 1.04.1957 became owners of the land in their possession.

22. The relevant provisions of Section 88B inserted by amendment of the 1948 Act in the same year, that is, 1957, is set out herein below for convenience:-

"88B. Exemption from certain provisions to land of local authorities, universities and trusts.- (1) [(1) Nothing in foregoing provisions except sections 3, 4B, 8, 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,

(a) to lands held or leased by a local authority, or University established by law in the [2] [Bombay area of the State of Maharashtra]; and

(b) to lands which are the property of a trust for an educational purpose, [3] [a hospital, Panjarapole, Gaushala] or an institution for public religious worship;

Provided that,-

(i) such trust is or is deemed to be registered under the Bombay Public Trust Act, and

(ii) the entire income of such lands is appropriated for the purposes of such trust;"

23. Section 88B provides for exemption of land being the property of a Trust, for inter alia public religious worship and/or educational and/or social purpose from the vesting provisions. The High Court noted that while the petitioners were tenants on Tillers day i.e. 1.04.1957, the Trust was registered for the first time on 8th August, 1984.

24. Relying on Laxminarayan Temple (supra) the High Court held that in order for the Trust to claim an exemption under Section 88B of the 1948 Act, the Trust had to be registered before 1.04.1957, for if the trust was not registered on 1.04.1957, a tenant would become a deemed purchaser on that date and once the tenant became a deemed purchaser the ownership of the land which vested in the tenant would not be divested by subsequent registration of the Trust.

25. In Laxminarayan Temple (supra), a Division Bench of the Bombay High Court held that the word "trust" in Clause B of Section 88B(1) of the 1948 Act is not confined to a trust for an educational purpose but it covers trusts for other purposes mentioned in Clause (b) including a trust for an institution for public religious worship. However, a Trust is not entitled to the exemption till it fulfills two requirements mentioned in the proviso, that is, (i) the trust must either be registered, or (ii) deemed to be registered under the Bombay Public Trusts Act.

26. The High Court also relied upon Chhatrapati Charitable Devasthan Trust (supra). In the aforesaid case, a Bench of coordinate strength of the same High Court held that even where an application for registration of a Trust had been made before 1957, but the registration had not actually been effected before 1.04.1957, the tenant would become the deemed owner of the land and, therefore, a certificate under Section 88B of the 1948 Act could not be granted, rejecting the argument that registration relates back to the date of the application.

27. The High Court rejected the submission that the decisions of Bombay High Court in Laxminarayan Temple (supra) and Chhatrapati Charitable Devasthan Trust (supra) required reconsideration and should therefore be referred to a larger Bench.

28. The Bombay Public Trusts Act was enacted to make provisions for the better administration of public religious and charitable trusts in the State of Bombay. Before the Public Trusts Act was passed, public trusts in the Bombay State were governed by various acts including the Mussalman Wakf (Bombay Amendment) Act of 1935, the Parsi Trusts Registration Act, 1936, the Religious Endowments Act, 1863 and the Charitable and Religious Trusts Act, 1920.

29. The Public Trusts Act, as stated in its preamble, was enacted to regulate and to make better provisions for public trusts within the State of Bombay. Before the Public Trusts Act was enacted, numerous 'Mahants', 'Pujaris', 'Acharya' etc. thrived and flourished on the income of temples and/or deities. Donations/offerings made by innumerable devotees visiting the temples were seldom accounted for by the 'Mahants', 'Pujaris', etc. who exercised the rights of ownership over the temples and/or their properties.

30. The Public Trusts Act, which, as stated hereinbefore, is intended to regulate the administration of public religious and charitable trusts in the erstwhile State of Bombay, now the States of Maharashtra and Gujarat, creates for the first time a unified special organization to deal with charity matters. Trusts, long in existence, came to be regulated by the the Public Trusts Act. The Mahants, pujaris etc. who administer properties of the deity as trustees, were brought within the ambit of the Public Trusts Act.

31. Section 2 (13) of the Public Trusts Act defines a public trust as follows

"2(13) "public trust" means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a wakf, church, synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860"

32. Counsel appearing on behalf of the appellant has very rightly argued, that in view of the definition of 'Public Trust' in the Public Trusts Act, which also includes constructive trust either for a public religious or charitable purpose, the absence of a deed of trust would not make any difference to the position of the Trust as a "public trust".

33. A constructive trust arises by operation of law, without regard to the intention of the parties to create a trust. It does not require a deed signifying the institution of trust. Under a constructive trust, the trust arises by operation of law as from the date of the circumstances which give rise to it. The function of the court is only to declare that such a trust has arisen in the past.

34. Constructive trust can arise over a wide range of situations. To quote Cardozo, J., " a constructive trust is a formula through which the conscience of equity finds expression."

35. Story on Equity Jurisprudence has explained 'Constructive Trust' as:-

"One of the most common cases in which a Court of equity acts upon the ground of implied trusts in invitum, is where a party has received money which he cannot conscientiously withhold from another party. It has been well remarked, that the receiving of money which consistently with conscience cannot be retained is, in equity, sufficient to raise a trust in favour of the party for whom or on whose account it was received. This is the governing principle in all such cases. And

therefore whenever any controversy arises, the true question is, not whether money has been received by a party of which he could not have compelled the payment, but whether he can now, with a safe conscience, *ex aequo et bono*, retain it. Illustrations of this doctrine are familiar in cases of money paid by accident, or mistake, or fraud. And the difference between the payment of money under a mistake of fact, and a payment under a mistake of law, in its operation upon the conscience of the party, presents the equitable qualifications of the doctrine in a striking manner. It is true that Courts of Law now entertain jurisdiction in many cases of this sort where formerly the remedy was solely in Equity; as for example, in an action of assumption for money had and received, where the money cannot conscientiously be withheld by the party; following out the rule of the Civil Law; *Quod condition in debiti non datur ultra, quam locupletior factus est, qui accepit*. But this does not oust the general jurisdiction of Courts of Equity over the subject-matter, which had for many ages before been in full exercise, although it renders a resort to them for relief less common, as well as less necessary, than it formerly was. Still, however, there are many cases of this sort where it is indispensable to resort to Courts of Equity for adequate relief and especially where the transactions are complicated, and a discovery from the defendant is requisite."

36. Section 90 of the Trusts Act states that if there is a person in a fiduciary relation to another, he cannot take advantage of that position so as to gain something exclusively for himself, which he otherwise would not have obtained, but for the position which he held.

37. Section 94 of the Indian Trusts Act, 1882 has allowed the creation of a constructive trust when situations went beyond the confines of the Act. Section 94 has later been repealed by the Benami Transactions Prohibitions Act, 1988. Section 94 of the Trusts Act read :-

"94. Constructive trusts in case not expressly provided for- In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands."

38. In *Gopal L. Raheja v. Vijay B. Raheja*<sup>3</sup>, the Bombay High Court restrained itself from exercising its equitable jurisdiction to apply the English doctrine of constructive trust when the legislature had specifically deleted it from the Indian Trusts Act.

39. In our view, the repeal of Section 94 of the Act does not put any fetter in declaring a trust, even if the situation falls outside the purview of the Act. Its jurisdiction can be derived from Section 151 of CPC and Section 88 of the Indian Trusts Act.

40. There can be no doubt that the Trust was all along a public trust within the meaning of Section 2(13) of the Bombay Public Trusts Act. The Trust has rightly been registered

under the Public Trusts Act, after due enquiry. However, all public trusts are not entitled, as of right, to the exemption under Section 88B of the 1948 Act. The said section only applies to lands which are property of a trust inter alia for educational purpose or for public religious purpose provided such trust is deemed to be registered or is registered under the Public Trusts Act.

41. Learned counsel appearing on behalf of the appellant emphatically argued that the trust being a 'public trust' within the meaning of the Public Trusts Act, the Trust is deemed to have been registered as and when the Public Trusts Act came into force, long before Tillers Day, i.e., 1.4.1957. The Public Trusts Act recognizes even constructive trusts.

42. The expression "deemed to have been registered" is neither defined in the Public Trusts Act nor defined in the Indian Trusts Act, 1882. Section 28 of the Public Trusts Act provides:

"28. Public trust previously registered under the enactment specified in Schedule (1) All public trusts registered under the provisions of any of the enactments specified in Schedule A and Schedule AA shall be deemed to have been registered under this Act from the date on which this Act may be applied to them. The Deputy or Assistant Charity Commissioner of the region or sub-region within the limits of which a public trust had been registered under any of the said enactments shall issue notice to the trustee of such trust for the purpose of recording entries relating to such trust in the register kept under section 17 and shall after hearing the trustee and making such inquiry, as may be prescribed, record findings with the reason therefor. Such findings shall be in accordance with the entries in the registers already made under the said enactment subject to such changes as may be necessary or expedient. (2) Any person aggrieved by any of the findings recorded under sub-section (1) may appeal to the Charity Commissioner.

(3) The provisions of this Chapter shall, so far as may be, apply to the making of entries in the register kept under section 17 and the entries so made shall be final and conclusive."

Only those Trusts which were registered under the enactments specified in Schedule A and Schedule AA are to be deemed to have been registered under the Public Trusts Act. There is no other provision in the Public Trusts Act with regard to deemed registration.

43. The legislature has, in its wisdom, very consciously provided that all public trusts registered under the provisions of the enactments specified in Schedule 'A' & 'AA' to the Public Trusts Act shall be deemed to have been registered under the Public Trusts Act. If it were the intention of the legislature that all public trusts should be deemed to have been registered under the State Public Trusts Act, the legislature would have made an express provision to that effect. It is not for the Court to read into statute words and/or expressions which are not there in the statute.

44. The judgment of this Court in *Mahant Ramswarup Guru Chhote Balakdas vs. Motiram Khandu Patil and Others*<sup>4</sup>, cited on behalf of the respondents is clearly distinguishable since this Court considered the expression "deemed to be registered" in Section 28 of the State Public Trusts Act in the context of a trust situate in Burhanpur, Madhya Pradesh, outside the State of Maharashtra.

45. This Court, in effect and substance, said that the re-organization of States in 1956 and 1960, consequential to which new areas which originally formed part of the Madhya Pradesh State became part of the Maharashtra State, necessitated amendments in the Bombay Trusts Act to incorporate Schedule AA, which, read with Section 28, inter alia, provided that trusts registered under the Madhya Pradesh Trusts Act, 1951 would be deemed to have been registered under the Public Trusts Act. This was to save trusts already registered under the Madhya Pradesh Trusts Act, 1951, in areas which later became part of Maharashtra, from the trouble of having to once again get itself registered under the Bombay Act.

46. This Court found that where the trust was administered outside the State of Maharashtra, with bulk of its properties except a few plots of land situate outside Maharashtra, such trusts would not be governed by the Public Trusts Act of the State of Maharashtra and would not, therefore, fall within the ambit of Section 28 of the said Act. Thus, such trusts, though registered under the Madhya Pradesh Public Trusts Act, 1951, would not be deemed to have been registered under the Bombay Act.

47. As observed above, the Trust, being a public trust, has rightly been registered on 8.8.1984, after due enquiry. The registration of the Trust under the Public Trusts Act cannot be questioned. However, the registration is prospective, w.e.f. 8.8.1984. The respondents became deemed purchasers on Tillers' Day, that is, 1.4.1957. The right under Section 32 of the 1948 Act accrued to the respondents on that day. The respondents cannot be divested of such right upon subsequent registration of the Trust. It may be true that a Trust for a religious purpose has the right to own and acquire property. However, such property may be taken away by authority of law. The validity of Section 32 of the Public Trusts Act is not in question.

48. Accordingly, the judgment and order passed by the High Court is affirmed and the appeal is dismissed without any order as to costs.

Judgment Referred.

<sup>1</sup>*AIR 1970 Bom 0023*

<sup>2</sup>*(1979 Mh.L.J.0163*

<sup>3</sup>*(2007) 4 Bom CR 0288*

<sup>4</sup>*AIR 1968 SC 0422*