

CASE NO.:
Appeal (civil) of 2003

PETITIONER:
Ramgopal & Another

RESPONDENT:
Balaji Mandir Trust & Ors.

DATE OF JUDGMENT: 19/02/2003

BENCH:
Shivaraj V. Patilv & Arijit Pasayat

JUDGMENT:

J U D G M E N T

(Arising out of Special Leave Petition (C) No.5397 /2002)

SHIVARAJ V. PATIL J.

Leave granted.

The plaintiffs filed a suit against the defendants for the eviction from the house and shop given to them on rent. The plaintiff no. 1 is a religious institution registered under the Madhya Pradesh Public Trust Act. The defendants resisted the suit on various grounds. The trial court decreed the suit. The defendants filed an appeal before the High Court challenging the decree passed by the trial court. The Division Bench of the High Court dismissed the appeal finding no merit in it. Hence, this appeal.

Before the High Court, findings of fact were not disputed. The only ground urged was that plaintiff no. 1 has failed to plead and prove that it is a religious/charitable trust and it was not entitled to get the benefit of exemption notification issued under Section 3(2) of the Madhya Pradesh Accommodation Control Act, 1961 (for short 'the Act'); consequently, it was necessary for the plaintiff no. 1 to have made out a ground under Section 12(1) of the Act for getting a decree in view of the decision in the case of Boolchand vs, Atal Ram Sindhi Dharamshala Trust [1998 (1) MPWN 113]. The High Court relying on the decision of this Court in Betibai and Others vs. Nathooram and Others [(1999) 6 SCC 368] held that the plaintiffs were entitled for a decree as passed by the trial court.

Shri U.N. Bachawat, learned Senior Counsel for the appellants urged that the High Court committed an error in taking a view that the plaintiffs were entitled for benefit of exemption notification issued under Section 3(2) of the Act in the light of the decision in the case of Betibai aforementioned. He contended that it was not established that whole of the rental income from the suit accommodation was utilized for the purpose of the trust, neither there was relevant material nor consideration by the Government before

issuing exemption notification and that such a notification could not be general in nature. He sought to distinguish the case of Betibai (supra) on the ground that the exemption notification considered in the case of S.Kandaswamy Chettiar vs. State of Tamil Nadu & Anr. [(1985) 1 SCC 290] was not identical to the one, which is applicable to the present case. He urged that there is a conflict between Betibai's case (supra) and State of M.P. vs. Kanhaiyalal [1970 MPLJ 973] case on the question whether the exemption notification can be general or it should be regarding a particular accommodation. As such, the controversy may require consideration by larger bench of this Court.

On the other hand, Shri G.L. Sanghi, learned Senior Counsel for the respondents submitted that the High Court, having considered all aspects and the submissions made before it, has rightly followed the case of this Court in Betibai case (supra) and no fault can be found with the impugned judgment.

In order to appreciate the respective contentions advanced on behalf of the parties it may be useful to look to Section 3(2) of the Act and the Exemption Notification issued thereunder, which read: -

"3(2) The Government (Central Govt.) may, by notification, exempt from all or any of the provisions of this Act any accommodation which is owned by any educational, religious or charitable institution or by any nursing or maternity home, the whole of the income derived from which is utilized for that institution or nursing home or maternity home."

"NOTIFICATION NO. F-24-(4)-83-XXXII-I
Dated 7th September, 1989, published
in M.P. Rajpatra of the same date on
p.2144.

In exercise of the powers conferred by sub-section (2) of Section 3 of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961), the State Government hereby exempts all the accommodation owned by

(i) the Wakf, registered under the Wakf Act, 1954 (No. 29 of 1954), or

(ii) the public trust registered under the Madhya Pradesh Public Trusts Act, 1951 (No. XXX of 1951) for an educational, religious or charitable purpose,

from all the provisions of the Madhya Pradesh Accommodation Control Act, 1961 (No. XLI of 1961)".

As already noticed above, the appellants did not challenge the finding of facts before the High Court

except the legal question. In para 2 of the plaintiff's averment that it is a religious institution and is registered under the M.P. Public Trust Act. The defendants, while admitting this averment in the written statement only stated that the suit has not been filed by all the trustees, therefore, the suit was not maintainable. The trial court recorded a finding that the suit was maintainable. In the written statement the defendants did not raise any plea that the plaintiffs are not entitled for the benefit of the Exemption Notification, extracted above; it was also not pleaded that the rental income from the premises was not utilized for the purpose of the plaintiff trust; so also they did not challenge the validity of the said notification either before the trial court or before the High Court. In this view the High Court rejected the submission made on behalf of the appellants that in the absence of any pleading and the proof tendered by the plaintiff no benefit of the Exemption Notification in filing the suit and getting the eviction decree could be granted to the plaintiff. In para 11 of the impugned judgment the High Court has held thus: -

"11. In our opinion, therefore, the trial court was perfectly justified in proceeding on the basis that the plaintiff is a religious trust and is entitled to file a suit on the strength of the exemption notification and also claim a decree for eviction of the defendant without taking recourse to Section 12 of the Act. The decision relied on by the learned counsel for the respondent reported in 1998(1) MPWN (113) is distinguishable on facts. In that case parties joined issue on these facts and hence it had become necessary for the plaintiff to prove the facts. As held supra, such is not the case here."

The case relied on by the appellants in Boolchand case (supra) is also distinguished, as is evident from the paragraph extracted above. The learned counsel for the appellants in support of his submissions also relied on the decisions in (1) State of M.P. vs. Kanhaiyalal [1970 MPLJ 973], (2) Chintamani Chandra Mohan Agarwal vs. State of M.P. [1994 MPLJ 597] and order dated 19.10.1995 passed in State of M.P. and another vs. Smt. Chintamani Agrawal and others [Civil Appeal No. _____ of 1995 (arising out of SLP (C) No. 4360 of 1994)]. In our view these decisions do not help the appellants having regard to a direct decision of this Court in Betibai and others vs. Nathooram and others [(1999) 6 SCC 368]. Distinguishing the aforesaid decisions relied on by the learned counsel for the appellants in Betibai's case (supra) in paras 5 to 7 of the said judgment the position is made clear thus: -

"5. Learned counsel for the appellants has contended that the notification dated 7.9.1989 has already been held to be bad by the Madhya Pradesh High Court in Chintamani Chandra Mohan Agarwal v. State of M.P. (1994

MPLJ 597). He also contended that this Court in Mangilal vs. Shri Chaturbhuja Mandir [(1998) 5 SCC 597] has also held the notification to be bad. It is, in these circumstances, contended that the suit of the respondents was liable to be dismissed and the appellants cannot be evicted from the premises in question, except by invoking any of the grounds set out in Section 12 of the Act. The pleas raised by the counsel for the appellants, in our opinion, have no substance.

6. The decision rendered by the Madhya Pradesh High Court in Chintamani case was challenged in an appeal filed in this Court by the State of Madhya Pradesh which was disposed of by a Bench of which one of us, Saghir Ahmad J., was a Member and the notification dated 9.9.1989, by which the properties belonging to public charitable trusts and the Wakf were exempted, was upheld. It was in that judgment held, inter alia as under:-

"The State of Madhya Pradesh in exercise of the powers under sub-section (2) of Section 3 of the M.P. Accommodation Control Act, 1961 (the Act), exempted all buildings owned by the Madhya Pradesh Wakf Board (Board) from the operation of the Act. The notification dated September 7, 1989 granting exemption to the Board under the abovementioned provision of the Act was challenged before the High Court. The High Court quashed the notification on the short ground that there was no material before the State Government to reach the satisfaction that it was necessary to issue the impugned notification.

Learned counsel for the State of M.P. has invited our attention to the letter dated March 26, 1976, by the then Prime Minister of India addressed to the Chief Minister of the State of M.P., suggesting, for the reasons given in the said letter, to grant exemption of the provisions of the Act to the properties owned by the Wakf. Thereafter, the State of M.P. made enquiries from various

other States in this respect. On receipt of the replies, the matter was considered and thereafter, the exemption notification was issued. We are satisfied that there was sufficient material before the State Government for issuing the impugned notification. We, therefore, set aside the impugned judgment of the High Court. We seek support from the judgment of this Court in *S.Kandaswamy Chettiar v. State of T.N.*"

7. The decision of this Court in *Mangilal* case upon which reliance has been placed is distinguishable as the only question pleaded in that case was that since the notification dated 7.9.1989 has been held to be bad by the High court in respect of wakf properties only, the trust properties would continue to be exempted from the operation of the Act. This plea was not accepted and it was held that the notification dated 9.9.1989 was a composite notification which applied not only to the wakf properties but also to other charitable trust properties, and since this notification has been held to be bad in respect of the wakf properties, it would be bad for all other properties, including trust properties, which were sought to be exempted from the operation of the Act. The validity of the notification was not questioned in that decision. Moreover, it was not brought to the notice of their Lordships, who decided that case, that against the decision of the Madhya Pradesh High Court in *Chintamani* case Civil Appeal No. 9909 of 1995 [arising from SLP (Civil) No. 4360 of 1994] was filed in this Court, which was decided on 19.10.1995 and the decision of the Madhya Pradesh High Court was reserved with a categorical finding that the notification issued by the Madhya Pradesh Government exempting the wakf and trust properties from the operation of the Act was valid."

In the case of *Kanhaiyalal* (supra) the Exemption Notification issued under Section 3(2) of the Act was of 22.5.1963, with which we are not concerned. The notification governing the present case is dated 7.9.1989. Even otherwise that case was rightly distinguished on facts. We respectfully agree with the decision in *Betibai* case (supra), since we do not have any good reason to differ. Having regard to all aspects in the present case we are unable to accept the submissions of the learned counsel for the appellants to refer the matter to a larger Bench for

consideration. The learned counsel tried to make a distinction on the basis of language used in the Exemption Notification, which came up for consideration in S. Kandaswamy Chettiar vs. State of Tamil Nadu and another [(1985) 1 SCC 290], to which reference is made in para 8 of the judgment in Betibai case, which reads:-

"8. It may be mentioned that similar notifications issued in other States, by which wakf and trust properties were exempted, have already been upheld by this Court. As for example, the notification issued by the State Government of Tamil Nadu exempting wakf and trust properties, was upheld by this Court in S. Kandaswamy Chettiar vs. State of T.N. Even this decision was not brought to the notice of the learned Judges who disposed of Mangilal case."

The learned senior counsel for the appellants tried to draw a distinction on the ground that the provision for issuing Exemption Notification in the case of Tamil Nadu is different inasmuch as the whole of the income derived from which is utilized for that institution is not to be found unlike the provision contained in Section 3(2) of the Act. This Court in Betibai case, as already noticed above, has rejected the contention. That apart, when the appellants have not challenged the validity of the notification and when they have failed to plead that whole of the rental income derived from the accommodations in question is not utilized for the purpose of the trust, we do not find any merit in this submission of the learned counsel also.

Having not raised any objection as to the maintainability of the suit on the ground that the suit of the plaintiff was not maintainable on the basis that the Exemption Notification does not cover their case and that too in the absence of either admitted or established facts it is not possible for us to take a different view. We do not find any good or valid reason to differ from the view taken by the High Court in the impugned judgment. The appeal has no merits. Consequently the same is dismissed. There shall be no order as to costs.