

A RAIZUR REHMAN KHAN AND ORS. ETC.

v.

STATE OF U.P. AND ORS.

OCTOBER 24, 1996

B [M.M. PUNCHHI AND K. VENKATASWAMI, JJ.]

U.P. Imposition of Ceiling On Land Holdings Act, 1960 :

C *S.6(1) clause(f)—Exemption of certain land from the imposition of ceiling—Wakf Alal Aulad—Not entitled to any differential Treatment than what is due to institutions at large towards exemption of ceiling of lands in the hands of holders.*

Urban Land (Ceiling and Regulation) Act, 1976 :

D *S.19—Exemption—Charitable or religious Trust—Land used for any public charitable or religious purposes—Need to establish the same—Since in the instant cases matter is remitted by High Court to the first appellate authority, that authority to determine all the questions left to it.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5311 of 1983 Etc.

From the Judgment and Order dated 3.12.82 of the Allahabad High Court in C.M.P. No. 2798 of 1981.

F B.D. Agrawal, Ambrish Kumar, Pramod Swarup, K.S. Chauhan, Ashok K. Srivastava, S.A. Syed and Dr. N.A. Siddiqui for the appearing parties.

The following Order of the Court was delivered :

G C.A. Nos. 5311/83 & 1090/82 :

In these two appeals, the appellant is common and so is the judgment under appeal, hence, disposal by a common judgment. Herein, we are required to give an interpretation to clause (f) of sub-section (1) of Section 6 of the U.F. Imposition of Ceiling on Land Holdings Act, 1960 [the Act] H which reads as follows :

"6. Exemption of certain land from the imposition of ceiling.-
 (1) Notwithstanding anything contained in this Act, land falling in any of the categories mentioned below shall not be taken into-consideration for the purposes of determining the ceiling area applicable to, and the surplus land of a tenure- holder, namely -

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(a) to (e) x x x x x

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(f) land held from before the first day of May, 1959, by or under a public, religious or charitable waqf, trust, endowment or institution the income from which is wholly utilized for religious or charitable purposes, and not being a waqf, trust or endowment of which the beneficiaries wholly or partly are settlers or members of his family or his descendants;"

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The original appellant tenure-holder, now dead and represented by his natural grandson, who is also the Mutwalli, was the Wakif or creator of a Waqf Alal Aulad created at a period prior to the 1st day of May, 1959 whereby he had devised income of the properties created by Waqf to be spent on the welfare of his defined family members, branches of which he earmarked as also towards other charitable purposes such as spread of education. The tenure- holder claimed exemption under the above-quoted provision on the ground that the case squarely fell within the earlier part of clause (f) of sub-section (1) of Section 6 since it encompassed a charitable purpose of public nature when providing for need of education etc. The ceiling authorities below answered this question in a workable way of a sort in dividing the Wakf's income in a ratio expendible on charitable and family purposes, and gave relief covering charitable purposes. This approach of the authorities was demolished by the High Court in the two writ petitions preferred by the affected parties; the ultimate decision being that the Wakf fell within the purview of the latter part of the aforequoted provision and since it involved land income of which was partially meant for the settler and the members of his family, the tenure-holder could in no event claim exemption under the aforequoted provision. The aim here is to apply the said provision, if possible, to the Waqf Alal Aulad which is party meant for the benefit of settler and his family and partly for other religious and/or charitable purposes.

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It is plain from the reading of the provision that it is not meant to apply solely to Waqfs. It is not meant exclusively for the benefit of the

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- A Muslim community. Patently, it is a provision which applies to all and is meant to cover public, religious or charitable trusts, endowments or institutions inclusive of Waqf and no room has been made towards importing the specific attributes of a particular kind of institution with a particular character. What is clearly meant is that if the holder has in his possession an institution which holds land and that institution happens to be public, religious or charitable, in character, it would get exemption from being part of the tenureholder's holding, but if it is partially of that character, it would not. So, if it is wholly religious and/or charitable, it gets exemption but if it is partially so, it won't. We cannot agree to a Waqf Alal Aulad as known to Muslim Law to be entitled to any differential treatment than what is due to institutions at large towards exemption of ceiling of lands in the hands of the holders. In this view of the matter, we find no case made out in favour of the appellant in order to upset the orders of the High Court which has gone on to hold that the Waqf created by the original appellant cannot claim exemption under Section 6(1)(f) of the Act. We hold accordingly:

Both the appeals, thus, fail and are hereby dismissed. No costs.

CA No. 2356/84 :

- E The appellant, now dead, in the instant appeal is the same as in the afore two appeals i.e. CA Nos. 5311/83 and 1090/82. Here, Section 19 of the Urban Land (Ceiling and Regulation) Act, 1976 [the Ceiling Act] has been pressed into service laying claim that the lands held by the Waqf do not attract the provisions of the Ceiling Act. Section 19 thereof, so far relevant, reads as follows .

- F "19. Chapter not to apply to certain lands –

(1) Subject to the provisions of sub-section (2), nothing in this chapter shall apply to any vacant land held by –

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(iv) Any public charitable or religious trust (including waqf) and required and used for any public charitable or religious purposes.

- H Provided that the exemption under this clause shall apply only

so long as such land continues to be required and used for such purpose by such trust." A

The High Court when interpreting the provision has taken the view that the vacant land-held by such trust if it is required and used for any public, charitable or religious purpose is exempt from the purview of the Ceiling Act but the proviso very clearly adds a rider that such exemption shall apply only so long as such land continues to be required and used for such purpose by such Trust. The emphasise is that vacant land which is sought to be retrieved from the provisions of the Ceiling Act, must be "required and used" for any public, charitable or religious purposes. It would, thus, be obligatory on the Trust or the Waqf, as the case may be, to plead and establish that such vacant land has been kept "required and used" for such of the purposes as mentioned therein and claim for exemption cannot be laid merely on the footing that such vacant land is precious or likely to fetch some income, if put to proper use. At the same time, it is to be understood that if such land is otherwise income-giving, other than agricultural, then it is out of the scope of sub-clause (iv) of Section 19 as such purpose cannot be termed as a public, charitable and/or religious purpose. Instantly, no need of such kind of any particular plot of land has been pleaded by the appelland in order to establish that it was put and was expected to be put to use for any public religious or charitable purpose devised by the Wakf. Since the matter now stands remitted by the High Court to the first appellate authority, it is up to that authority to determine all questions left to it. We do not intend to comment any further. B C D E

For the foregoing reasons, this appeal too fails and is hereby dismissed. No costs.

G.N.

Appeal dismissed. F