

Bethany Convent vs State of Kerala

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Court : Kerala

Decided On : Nov-11-2022

Judge : Honourable Mr. Justice Gopinath P.

Appeal No. : WP(C)/35529/2022

Appellant : Bethany Convent

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE GOPINATH P. FRIDAY,
THE 11TH DAY OF NOVEMBER 2022 / 20TH KARTHIKA, 1944 WP(C)
NO. 35529 OF 2022 PETITIONER: 1 BETHANY CONVENT
REPRESENTED BY ITS PROVINCIAL SUPERIOR, SR. JOBSY SIC,
AGED 47 YEARS, D/O. LATE MR. P M JACOB, THIRUMOOLAPURAM
P.O., THIRUVALLA, PATHANAMTHITTA, PIN - 689115 BY ADVS.
SANTHOSH G. PRABHU N.U.DEEPA A.ASWATHY REVATHY P.
MANOHARAN RESPONDENTS:

1 STATE OF KERALA REPRESENTED BY ITS SECRETARY, LAND
REVENUE DEPARTMENT, SECRETARIAT,

THIRUVANANTHAPURAM, PIN - 695001 2 REVENUE DIVISIONAL OFFICER THIRUVALLA, 9HG8+G4C, RDO OFFICE, PALIKARA RD, THIRUVALLA, KERALA., PIN - 689101 3 TAHSILADAR MALLAPALLY TALUK, CMX3+624, KOTTAYAM ROAD, CIVIL STATION, MALLAPPALLY, KERALA, PIN - 689585 4 VILLAGE OFFICER KALLOOPPARA VILLAGE OFFICE, CJ2P+36C, KOLLAMALAPADI, KALLOOPPARA - MALLAPALLY ROAD, KERALA, PIN - 689583 BY ADV. THUSHARA JAMES, SR. GOVERNMENT PLEADER THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON

11.11.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 11th day of November, 2022 The petitioner suffered Ext.P4 order of assessment under the provisions of the Kerala Building Tax Act, 1975. The petitioner has filed Ext.P5 appeal challenging Ext.P4 order before the 2nd respondent. The petitioner has approached this Court being aggrieved by the proceedings initiated to

recover amounts assessed in terms of Ex.P4 order

from the petitioner, despite the fact that Ext.P5 appeal is pending consideration of the 2nd respondent.

2. The learned counsel appearing for the

petitioner points out that the petitioner is a convent and is entitled to the exemption from payment of building tax in terms of the provisions contained in Section 3(1)(b) of the Kerala Building Tax Act, 1975. It is submitted that the provisions of sub-section 2 of Section 3 indicate when a question arises as to

whether the petitioner is entitled to such exemption or not, the matter should be referred to the Government for adjudication. It is submitted that

the 3rd respondent arbitrarily and illegally decided the question against the petitioner finding that the petitioner is not entitled to such exemption. It is submitted that the petitioner is therefore entitled to relief sought for in the present writ petition.

3. The learned Senior Government Pleader

appearing for the respondents would fairly submit that the question as to whether the petitioner was entitled to Section 3(1)(b) of the Kerala Building Tax Act, 1975, ought to have been determined by the Government as provided for sub-section 2 of Section 3 of the Kerala Building Tax Act. It is submitted that a direction can be issued to the 2nd respondent before whom the appeal is pending to refer that question for consideration of the Government as the said question can be referred even at the stage of appellate

proceedings. Having heard the learned counsel for the petitioner and the learned Senior Government Pleader appearing for the respondents, this writ petition will stand disposed of directing the 2nd respondent to refer the question as to whether the petitioner is entitled to exemption in terms of Section 3(1)(b) of the Kerala Building Tax Act, 1975 to the Government for consideration, as provided for under sub-section 2 of Section 3 of the said Act. Ext.P5 appeal filed by the petitioner shall not be decided till the decision of the Government on the issue is received by the 2nd respondent. Any proceedings for recovery of amounts due under Ext.P4 order shall be kept in abeyance till a decision is taken on Ext.P5 appeal by the 2nd respondent. Sd/- GOPINATH P. JUDGE

SKP/11-11 APPENDIX OF WP(C) 35529/2022 PETITIONER'S EXHIBITS:
EXHIBIT P1 A TRUE COPY OF THE NOTICE DATED 25.10.2021 BEARING NO. KBT/82/2018KLPA ISSUED BY THE 3RD EXHIBIT P2 A TRUE COPY OF THE NOTICE DATED 25.10.2021 BEARING NO. B4-KBT/82/2018KLPA ISSUED BY THE 3RD RESPONDENT EXHIBIT P3 A TRUE COPY OF THE LETTER DATED

24.11.2021 SENT EXHIBIT P4 A TRUE COPY OF THE ORDER DATED 03.01.2022 BEARING NO. TKMLPY/624/21-B4 ISSUED BY THE 3RD EXHIBIT P5 A TRUE COPY OF APPEAL NO. A2-454/338863/2022 DATED 22.01.2022 FILED BY THE PETITIONER

EXHIBIT P6 A TRUE COPY OF THE LETTER DATED 20.05.2022

BEARING NO. B4-624/21 ISSUED BY THE 3RD RESPONDENTS' EXHIBITS:NIL
TRUE COPY P.A.TO JUDGE

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