

The Cherthala Municipality and Another Vs. Usha P.Panicker

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Court : Kerala

Decided On : Dec-12-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : The Cherthala Municipality and Another

Respondent : Usha P.Panicker

Judgement :

'CR' IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN FRIDAY, THE12H DAY OF DECEMBER201421ST AGRAHAYANA, 1936 WA.No. 500 of 2009 () IN WP(C).31338/2008 ----- AGAINST THE

JUDGMENT

IN WP(C) 31338/2008 of HIGH COURT OF KERALA DATED27 11-2008 APPELLANTS/RESPONDENTS2AND3

----- 1. THE CHERTHALA MUNICIPALITY, CHERTHALA.

2. THE SECRETARY, CHERTHALA MUNCIPALITY, CHERTHALA. BY ADV. SRI.J.OM PRAKASH RESPONDENT(S)/PETITIONER AND RESPONDENTS1AND4

----- 1. USHA

P.PANICKER, DIRECTOR AND PRINCIPAL OF S.B.COLLEGE OF ENGINEERING AND I.T.C. COURT COMPLEX JUNCTION CHERTHALA.

2. THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, LOCAL ADMINISTRATION THIRUVANANTHAPURAM.

3. THE DIRECTOR, MUNICIPAL ADMINISTRATION, THIRUVANANTHAPURAM.
R1 BY ADV. SRI.R.PARTHASARATHY R1 BY ADV. SRI.C.JAYACHANDRAN R2
& R3 BY SR.GOVERNMENT PLEADER SRI P.M.SANEER THIS WRIT APPEAL
HAVING BEEN FINALLY HEARD ON 10.10.2014, ALONG WITH WA. 2431/2009,
THE COURT ON 12.12.2014 DELIVERED THE FOLLOWING: "CR" ANTONY
DOMINIC & ANIL K.NARENDRAN, JJ.

----- Writ Appeal Nos.500/09 & 2431/09
----- DATED THIS THE 12th DAY OF
DECEMBER, 2014

JUDGMENT

ANIL K.NARENDRAN J.

These Writ Appeals arise out of the judgment of the learned Single Judge dt.27.11.2008 in W.P.(C)No.31338/2008. The appellants in W.A.No.500/09 are the 2nd and 3rd respondents in W.P. (C)No.31338/2008 and the appellant in W.A.No.2431/09 are the 1st and 4th respondents in that Writ Petition.

2. W.P.(C).No.31338/08 was filed by the 1st respondent herein seeking a writ of certiorari to quash Ext.P9 Government order dt.18.9.2008 and seeking a declaration that she is not liable to pay the property tax for the building bearing No.5/277 and 228 in Cherthala Municipality. The learned Single Judge by judgment dt.27.11.2008 allowed the writ petition quashing Ext.P9 Government order and declaring that the 1st respondent herein is not liable to pay property tax in respect of the building in question and that the demand made by the appellants in W.A.No.500/09 is W.A.Nos.500/09 & 2431/09 -2- unsustainable. It is aggrieved by the above judgment of the learned Single Judge, the appellants are before us in these Writ Appeals.

3. We heard arguments of the learned counsel for the appellants in both these Writ Appeals and also perused the documents on record.

4. The 1st respondent, as contended in the Writ Petition, is the Director and Principal of SB College of Engineering and Industrial Training Centre, which is an institution recognised by both State and Central Governments as an Industrial Training Centre, imparting training in various courses. Exts.P1 and P1(a) are the renewal of provisional recognition granted by the Directorate of Technical Education, Thiruvananthapuram, to the said institution. Ext.P2 is the permanent affiliation granted by the Directorate of Technical Education, based on the recommendation of the Affiliation Standing Committee of the National Council for Vocational Trades, New Delhi, for conducting various courses. Ext.P3 is the permission granted to the 1st respondent by the Cherthala Municipality for construction of the building for the W.A.Nos.500/09 & 2431/09 -3- purpose of running the educational institution.

5. The 1st respondent claimed exemption from property tax, under Section 235(1)(d) of the Kerala Municipality Act, 1994 (hereinafter referred to as 'the Act') on the ground that, the building is exclusively used as an educational institution and recognised by the State Government as well as Central Government. But the Municipality issued Ext.P4 notice demanding property tax for the said building for the year 1995-96. Prior to that, the Municipality had issued another notice demanding property tax for the year 1994-95.

6. In view of the demand made by the Municipality, the 1st respondent submitted Ext.P5 reply. But the same was rejected stating that the building is not liable to be exempted from property tax, as the same is not under the ownership of the educational institution. Pursuant to that decision, the 1st respondent was issued with Ext.P6 notice of the Municipality, demanding property tax for the entire period. On getting Ext.P6 notice, the 1st respondent approached this Court in O.P.1894/1996 and this Court granted an order of stay of Ext.P6. W.A.Nos.500/09 & 2431/09 -4- During the pendency of that original petition, the 1st respondent approached the Director, Municipal Administration, seeking exemption from property tax. But the said request was rejected by Ext.P7 order dt.26.3.1996

stating that, as the building is not in the name of SB College of Engineering and ITC, it is not entitled for any exemption from property tax under Section 235 (1)(d) of the Act.

7. By Ext.P8 judgment, this Court disposed of O.P.No.1814/96, setting aside Ext.P7 order passed by the Director of Municipal Administration and the Government was directed to consider the representation referred to in Ext.P7 with notice to the 1st respondent and the Municipality. It was also made clear that, till appropriate orders are passed as directed above, the interim passed by this Court shall continue. As borne out from Ext.P8 judgment, the 1st respondent contended before this Court that, her ownership of the property is in her capacity as the Proprietrix of the recognised educational institution and hence the building qualifies for exemption, in case the other conditions under Section 235(1)(d) of the Act that, the W.A.Nos.500/09 & 2431/09 -5- educational institution is a recognised one and the place is exclusively used for the purpose of running such educational institution are satisfied. Pursuant to the direction contained in Ext.P8 judgment, the Government considered the matter and rejected the request by Ext.P9 order, stating that the building in the name of the petitioner is her personal asset, which cannot be exempted from property tax under Section 235(1)(d) of the Act. For arriving at such a conclusion, the Government have taken into consideration the fact that, the petitioner acquired the property in which the building is situate, on the basis of a sale deed executed in her favour by M/s. Bhavani Amma and Seetha Lakshmi. The property is purchased in her individual name and not in the capacity as the Director and Principal of the educational institution. Further, the application for building permit was also submitted in her name.

8. Aggrieved by Ext.P9 order, the 1st respondent approached this Court in W.P.(C)No.No.31338/08. Along with the Writ Petition, the 1st respondent produced Ext.P10 registered sale deed dt.25.8.1992, by which she acquired right over the W.A.Nos.500/09 & 2431/09 -6- property in which the building in question situates. A perusal of Ext.P10 registered sale deed would show that the 1st respondent purchased the said property in her individual capacity and not in her capacity either as the Proprietrix of the educational institution or as the Director and Principal of that institution. The learned Single Judge by judgment

dt.27.11.2008 allowed the Writ Petition, holding that Ext.P9 order is clearly against the provisions of Section 235(1)(d) of the Act. The Learned Single Judge quashed Ext.P9 order and declared that, the 1st respondent is not liable to pay property tax in respect of the building in question and that, the demand for the same by the Municipality, appellant in W.A.No.500/2009, is unsustainable. It is aggrieved by the judgment of the learned Single Judge dt.27.11.2008, the 2nd and 3rd respondents in the Writ Petition are before us in W.A.No.500/09 and the 1st and 4th respondents in the Writ Petition are before us W.A.No. 2431/09.

9. Section 235 of the Kerala Municipality Act, 1994, deals with exemption of certain buildings and lands from the property tax levied under Section 233 of the Act. Clause (d) of Sub-section W.A.Nos.500/09 & 2431/09 -7- (1) of Section 235, which deals with exemption of the buildings of educational institutions, as it stood prior to its substitution on 7.10.2009 by Act 30 of 2009, reads thus;

"35. Exemption:- (1) The following buildings and lands shall be exempt from the property tax: xx xx xx (d) buildings recognised by the Government or registered with the Municipality under this Act and owned and occupied by educational institutions and used only for teaching and libraries open to public." Going by Clause (d) of Sub-section (1) of Section 235 of the Act, the buildings recognised by the Government or registered with the Municipality under the Act and owned and occupied by educational institutions and used only for teaching and libraries open to public shall be exempted from payment of property tax. In *Sr. Poly Paradiyil v. Angamaly Municipality* (2005 (2) KLT88 this Court held thus; "There is no provision for recognition of buildings by the Government or for their registration by the Municipalities under the Kerala Municipality Act, 1994. But, when Section 235(1)(d) is read along with other provisions, it can be safely assumed that the Legislature, when it used the W.A.Nos.500/09 & 2431/09 -8- expression 'buildings recognised by the Government', meant the buildings owned by recognised educational institutions, under the provisions of the Kerala Education Act and Rules. Section 507 provides for registration of tutorial institutions. So, the expression 'building registered with the Municipality', used in Section 235(1)(d) must be to mean the buildings owned by such registered institutions." Therefore, going by Section 235(1)(d) of the Act, in order to get exemption from the property

tax levied under Section 233, the building should be one 'owned and occupied by an educational institution' recognised by the Government or registered with the Municipality and used only for teaching.

10. In the erstwhile Kerala Municipalities Act, 1960, Section 101 dealt with exemption of certain buildings and lands from the property tax. Clause (cc) of Sub-section (1) of Section 101, which dealt with exemption of the buildings used for educational purposes, charitable purposes, etc., read thus;

"01. Exemption:- (1) The following buildings and lands shall be exempt from the property tax: xx xx xx (cc) buildings used for educational purposes including hostels, public buildings and places used for the W.A.Nos.500/09 & 2431/09 -9- charitable purpose of sheltering the destitute or animals and libraries and playgrounds which are open to the public." Going by Clause (aa) of Sub-section (1) of Section 101 of the erstwhile Municipalities Act, buildings used for educational purposes including hostels, public buildings and places used for the charitable purpose of sheltering the destitute or animals and libraries and playgrounds which are open to the public shall be exempted from payment of property tax. Therefore, to get exemption from the property tax levied under Section 101 of the erstwhile Act, the building need only be one 'used for educational purposes' including hostels.

11. Though the exemption from property tax contemplated under Section 101 of the erstwhile Municipalities Act and Section 235 of the present Municipalities Act are with reference to the nature of use of building, there is marked difference in these provisions in the matter of exemption. While the erstwhile Act provided for exemption from property tax on the sole consideration of the user of the building for educational purposes; under the present Act, to become entitled for such exemption the W.A.Nos.500/09 & 2431/09 -10- building should be one 'owned and occupied' by an educational institution recognised by the Government or registered with the Municipality and 'used' only for teaching. Therefore, under the present Act, in order to become entitled for exemption from the property tax, mere use of the building for educational purpose is not sufficient and such building should be one 'owned and occupied' by such recognised educational institutions.

12. In IRC v. James Forrest (1890 (15) AC334, Lord Halsbury, L.C., observed as follows; "All exemptions from taxation to some extent increase the burden on other members of the community." In Littman v. Barron, Inspector of Taxes (1951 (2) ALL ER393 a decision of the Court of Appeal where Cohen, L.J., said thus; "The principle that in case of ambiguity a taxing statute should be construed in favour of a taxpayer does not apply to a provision giving a taxpayer relief in certain cases from a section clearly imposing liability".

13. In Novopan India Ltd. v. CEE (1994 Supp (3) SCC606, the Apex Court, relying on the principle laid down in IRC's case (supra) and Littman's case (supra), held that, the W.A.Nos.500/09 & 2431/09 -11- principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee, assuming that the said principle is good and sound, does not apply to the construction of an exception or an exempting provision, which has to be construed strictly. Further, a person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision and that, in case of doubt or ambiguity, benefit of it must go to the State. Paragraph 16 of the judgment reads thus;

"6. We are, however, of the opinion that, on principle, the decision of the Court in Mangalore Chemicals (1992 Supp (1) SCC21-and in Union of India v. Wood Papers (1990 (4) SCC256 referred to therein-represents the correct view of law. The principle that in case of ambiguity, a taxing statute should be construed in favour of the assessee-assuming that the said principle is good and sound-does not apply to the construction of an exception or an exempting provision; they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State. This is for the reason explained in Mangalore Chemicals and other decisions, viz., each such exception/exemption W.A.Nos.500/09 & 2431/09 -12- increases the tax burden on other members of the community correspondingly. Once, of course, the provision is found applicable to him, full effect must be given to it. As observed by a Constitution Bench of this Court in Hansraj Gordhandas v. H.H. Dave (1969 (2) SCR253 that such a notification has to be interpreted in the light of the words

employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification, i.e., by the plain terms of the exemption." 14. The principle laid down in Novopan India's case (supra) has been reiterated by the Apex Court in subsequent decisions. Suffice to mention, a recent decision of the Apex Court in Gammon (I) Ltd. v. Commissioner of Customs (2011 (12) SCC606.

15. In the instant case, 1st respondent claimed exemption from the property tax levied under Section 233 of the Act, on the ground that, the building constructed in the property owned by her is being used exclusively for educational purposes, i.e., for running an educational institution recognised by the State Government as well as Central Government. As we have already W.A.Nos.500/09 & 2431/09 -13- noticed, there is marked difference in the exemption contemplated under Section 101 of the erstwhile Municipalities Act and under Section 235 of the present Municipalities Act. Under Section 235(1)(d) of the present Act, in order to become entitled for exemption from the property tax, the building should be one 'owned and occupied' by recognised educational institutions and mere 'use' of the building for educational purpose is not sufficient.

16. In the light of the principle laid down by the Apex Court in Novopan India's case (supra) and reiterated in the subsequent decisions, the provision relating to exemption under Section 235(1)(d) of the Act has to be construed strictly and the 1st respondent, in order to succeed, must establish that her claim for exception squarely falls under the said provision. Section 235 (1)(d) of the Act says, as it stood prior to its substitution by Act 30 of 2004, in unequivocal terms that, in order to become entitled for exemption from the property tax, the building should be one 'owned and occupied' by recognised educational institutions. The said provision, which is clear, specific and W.A.Nos.500/09 & 2431/09 -14- unambiguous, leaves no room for doubt that, such exemption from property tax contemplated is intended only to those buildings 'owned and occupied' by recognised educational institutions.

17. Going by the averments in the Writ Petition and the documents on record, the 1st respondent is running an Industrial Training Centre imparting training in various courses, under the name, SB College of Engineering and Industrial Training Centre, which is an educational institution recognised by the Directorate of Technical Education, Thiruvananthapuram, and the the National Council for Vocational Trades, New Delhi. According to the 1st respondent, she has been running the educational institution in the present premises from 1976 onwards. In the year 1992 she purchased the property from the landlord, vide Ext.P10 sale deed dt.25.8.1992. Later, she applied for re- construction of the building situated therein and was issued with Ext.P3 building permit dt.6.10.1994 for educational purpose and after re-construction, the building is being used exclusively for educational purpose. W.A.Nos.500/09 & 2431/09 -15- 18. We notice that, in the earlier round of litigation, the 1st respondent contended before this Court that, she is the owner of the property in her capacity as the Proprietrix of the recognised educational institution and hence the building qualifies for exemption from the property tax. This is evident from Ext.P8 judgment of this Court in O.P.No.1814/1996. However, in the present round of litigation, the 1st respondent would contend that, the building is owned by her, who is the Director, Principal and Proprietrix of the educational institution, and she satisfies all the conditions which are required for getting exemption from the property tax. It is vide Ext.P10 sale deed dt.25.8.1992, the 1st respondent purchased the property in which she has been running the educational institution from 1976 onwards. Vide Ext.P10 sale deed, the 1st respondent purchased the property in her individual name not in her capacity either as the Proprietrix of the educational institution or as its Director and Principal. Merely for the reason that the 1st respondent obtained Ext.P3 building permit dt.6.10.1994 for constructing a building for educational purpose, it cannot be contended that the building W.A.Nos.500/09 & 2431/09 -16- which is being used for educational purpose is owned by that educational institution.

19. As we have already noticed, there is marked difference in the exemption contemplated under Section 101 of the erstwhile Municipalities Act and under Section 235 of the present Municipalities Act. Section 235(1)(d) of the Act says, in unequivocal terms that, in order to become entitled for exemption from the property tax, the building should be one 'owned and occupied' by recognised

educational institutions and mere 'use' of the building for educational purpose is not at all sufficient. This leads us to infer that, the exemption from the property tax contemplated under the said Section depends not only on the use of building, but also on the type of ownership. That being the mandate of Section 235(1)(d) of the Act, the claim made by the 1st respondent for exemption from the property tax can only be rejected, as she failed to establish that the building in question is owned by the educational institution. Therefore, the finding of the learned Single Judge that Ext.P9 order is against the provisions of Section 235(1)(d) of the Act W.A.Nos.500/09 & 2431/09 -17- cannot be sustained. In the result, W.A.Nos.500/2009 and 2431/09 are allowed, setting aside the judgment of the learned Single Judge dt.27.11.2008 in W.P.(C)No.31338/2008, thereby dismissing W.P.(C)No.31338/2008 filed by the 1st respondent herein. No order as to costs. SD/- ANTONY DOMINIC, JUDGE SD/- ANIL K.NARENDHRAN, JUDGE dsn

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