Safe Development Alms Trust Vs. the State of Kerala

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SooperKanoon Citation : sooperkanoon.com/2883

Court : Kerala

Decided On : Nov-17-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Safe Development Alms Trust

Respondent : The State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR MONDAY,THE17H DAY OF NOVEMBER201426TH KARTHIKA, 1936 WP(C).No. 10167 of 2014 (U) --------------------------- PETITIONER : --------------------- SAFE DEVELOPMENT ALMS TRUST, KARUNA HOSPITAL, MELAMURI, PALLIPPURAM P.O. PALAKKAD REPRESENTED BY ITS MANAGING TRUSTEE CUM CHAIRMAN P.V. HASSAN, AGED77YEARS, S/O. P.V. MOHAMMED. BY ADV. SRI.P.CHANDRASEKHAR RESPONDENT(S) : --------------------------- 1. THE STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT THIRUVANANTHAPURAM, PIN - 695001.

2. THE DISTRICT COLLECTOR PALAKKAD, PIN - 678001.

3. THE REVENUE DIVISIONAL OFFICER PALAKKAD, PIN - 678014.

4. THE TAHSILDAR CHITTOOR, PALAKKAD DISTRICT PIN - 678101.

5. THE VILLAGE OFFICER PERUMATTY, PALAKKAD DISTRICT PIN - 678004.

6. THE VILLAGE OFFICER VANDITHAVALAM, PALAKKAD DISTRICT PIN - 678534. R1 TO R6 BY GOVT. PLEADER SMT. K.T. LILLY THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON1711-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Mn ...2/- WP(C).No. 10167 of 2014 (U) --------------------------------------- APPENDIX PETITIONERS' EXHIBITS : ------------------------------------ EXHIBIT-P1: TRUE COPY OF TRUST DEED DATED201/1993 OF THE PETITIONER. EXHIBIT-P2: TRUE COPY OF LETTER DATED209.2006 OF THE GOVERNMENT OF INDIA PERMITTING THE PETITIONER. EXHIBIT-P3: TRUE COPY OF LETTER DATED127.2010 OF THE MEDICAL COUNCIL OF INDIA. EXHIBIT-P4: TRUE COPY OF MINIMUM STANDARD REQUIREMENTS FOR100M.B.B.S. ADMISSIONS ANNUALLY REGULATIONS, 1999, FRAMED BY THE MEDICAL COUNCIL OF INDIA. EXHIBIT-P5: TRUE COPY OF NOTICE DATED185.2009 OF THE5H RESPONDENT TO THE PETITIONER. EXHIBIT-P6: TRUE COPY OF PETITION OF THE PETITIONER DATED255.2009 OF THE5H RESPONDENT. EXHIBIT-P7: TRUE COPY OF NOTICE DATED22.2010 FROM THE4H RESPONDENT TO THE PETITIONER. EXHIBIT-P8: TRUE COPY OF THE PETITION DATED62.2010 BEFORE THE4H RESPONDENT REQUESTING THAT THE BUILDINGS MAY BE EXEMPTED FROM BUILDING TAX. EXHIBIT-P9: TRUE COPY OF

ORDER
NO.G2-09-10446-9-200 DATED53.2011 OF THE4H RESPONDENT. EXHIBIT-P10: TRUE COPY OF REVENUE RECOVERY NOTICE DATED253.2011 OF THE4H RESPONDENT. EXHIBIT-P11: TRUE COPY OF

JUDGMENT
DATED276.2011 IN W.P.(C) NO.10155 OF2011T. EXHIBIT-P12: TRUE COPY OF REPRESENTATION DATED44.2012 OF THE PETITIONER BEFORE THE4H RESPONDENT. EXHIBIT-P13: TRUE COPY OF

ORDER

NO.G2-2009/10446/9/200 DATED195/2012 OF THE4H RESPONDENT. EXHIBIT-P14: TRUE COPY OF

JUDGMENT
DATED257.2012 IN W.P.(C) NO.17390 OF2012 EXHIBIT-P15: TRUE COPY OF GO (MS) NO.1536/14 DATED113.2014 OF THE1T RESPONDENT. RESPONDENT(S)' EXHIBITS : NIL --- //TRUE COPY// P.A. TO JUDGE Mn A.K.JAYASANKARAN NAMBIAR, J.

------------------------------ W.P.(C).NO.10167 OF2014(U) ---------------------------------- Dated this the 17th day of November, 2014

JUDGMENT

The petitioner is a Charitable Trust owning a building, inside which it is conducting a Medical College, a Nursing College and also a Hospital. By Ext.P5 notice dated 18.5.2009, the petitioner was asked to file a return for the purposes of building tax. In response to the said notice, the petitioner by Ext.P6 request dated 25.5.2009, sought for considering his claim for exemption from building tax in accordance with Section 3(1)(b) of the Kerala Building Tax Act, 1975. The request of the petitioner did not get any positive response from the respondents who continued to issue notices to the petitioner asking him to file a return. Thereafter, the 4th respondent by Ext.P9 order dated 5.3.2011, levied building tax on the buildings owned by the petitioner, without referring the issue of exemption to the Government. Ext.P10 revenue recovery notice dated 25.3.2011 was also served on the petitioner. Aggrieved by Exts.P9 and P10, the petitioner preferred W.P.(C).No.10155/2011 before this Court. By Ext.P11 judgment, Ext.P9 order and Ext.P10 notice were set aside and W.P.(C).NO.10167/2014 2 the respondents were directed to consider the matter afresh. The petitioner then approached the 4th respondent through Ext.P12 representation. The 4th respondent, however, passed Ext.P13 order levying building tax. The 4th respondent, while passing the said order did not consider the claim of the petitioner for exemption. The petitioner therefore approached this Court, yet again, through another writ petition (W.P.(C).No.17390/2012) which was disposed by Ext.P14 judgment, quashing Ext.P13 and directing the 4th respondent to forward the exemption claim of the petitioner to the Government for disposal. Ext.P15 order dated 11.3.2014 was passed by the 1st respondent, pursuant to Ext.P14 judgment of this Court. In Ext.P15 order, the 1st respondent finds that the portions used exclusively for educational purposes have to be identified by the Tahsildar and an exemption granted in respect thereof. It is also clarified that portions used for students hostels would also be eligible for the grant of exemption under the Kerala Building Tax Act. As regards the portion used for Hospital and staff quarters, it was held that the said portion would be liable to building tax. In the writ petition, Ext.P15 order of the 1st respondent is challenged inter alia on the ground that the 1st respondent, while directing the Tahsildar to give effect to the exemption order passed by the 1st respondent, directs him to consider W.P.(C).NO.10167/2014 3 only the portion that is exclusively used for educational purposes for the purposes of grant of exemption. According to the petitioner, this could result in a situation where it would be left open to the Tahsildar to determine, based on his opinion and understanding, the area used for educational purposes. The petitioner also impugns Ext.P15 to the extent it denies the exemption in respect of the Hospital and staff quarters.

2. A counter affidavit has been filed on behalf of the respondents wherein the stand taken is that the building of the petitioner has been subjected to tax only in respect of that portion which is not covered by the exemption. It is pointed out that the Supreme Court decision in SH Medical Centre Hospital v. State of Kerala and Others - [2014 (1) KHC222(SC)] clearly indicates that insofar as the hospital conducted by the petitioner was taking fees from patients, it would not qualify for the exemption under the category of charitable purposes.

3. I have heard Sri.P.Chandrasekhar, the learned counsel appearing on behalf of the petitioner as also Smt.Lilly.K.T., the W.P.(C).NO.10167/2014 4 learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that although in Ext.P15 order, the 1st respondent considers the claim of the petitioner for exemption and finds that certain portions of the building are entitled to the benefit of exemption, the order, to

the extent it remands the matter to the Tahsildar for determining the area covered by the exemption, is liable to be set aside. In my view, since it is the Government that is entrusted with the task of deciding the issue, as to whether a building falls under sub section (1) of Section 3 of the Kerala Building Tax Act for the purposes of grant of exemption, the Government cannot delegate this function to the Tahsildar since that would be contrary to the express provisions of the Act. In this case, while the Government has indicated that the exemption would be applicable to such portions of the building as are used for educational purposes, while directing the Tahsildar to ascertain the areas that is used for educational purposes, the Government has not indicated that it is only those areas which are principally used for educational purposes as would qualify for the exemption. Further, the Government has left it to the wisdom of the Tahsildar to determine the W.P.(C).NO.10167/2014 5 exact portion of that building which would fall within the ambit of "principally used for educational purposes". In my view, it would be desirable for the Government to first get a report from the Tahsildar as to the exact area in the building which is covered by the various heads under which exemption can be granted. On receiving such a report from the Tahsildar, the Government should forward a copy of the same to the petitioner and invite his comments with regard to the extent shown in the Tahsildar's report, as the area covered by the exemption. Thereafter, the Government, after considering the objections, if any, of the petitioner with regard to the area covered by the exemption, should proceed to pass final orders regarding exemption clearly stating in the said order the exact area in the building which would be covered by the exemption granted. To enable the 1st respondent to do this, I quash Ext.P15 order and direct him to pass fresh orders in the matter, within a period of two months from the date of receipt of a copy of this judgment. It is made clear that the 1st respondent shall get the report from the Tahsildar as aforementioned and also consider the objections to the said report, if any, by the petitioner, within the time granted in this judgment for passing final orders. While passing final orders, as directed in this judgment, the Government shall also take note of the various W.P.(C).NO.10167/2014 6 decisions of this Court, as also the Supreme Court, dealing with the grant of exemption under Section 3(1) of the Kerala Building Tax Act especially in respect of buildings used principally for charitable and educational purposes. The Writ petition is disposed as above. A.K.JAYASANKARAN NAMBIAR JUDGE prp