

Jacob Vs. Tahsildar

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Court : Kerala

Decided On : Oct-27-1988

Reported in : [1989]176ITR243(Ker)

Judge : K.S. Paripoornan, J.

Acts : Kerala Building Tax Act, 1975 - Sections 3 and 3(1)

Appeal No. : Original Petition No. 8358 of 1988

Appellant : Jacob

Respondent : Tahsildar

Advocate for Def. : A.N. Rajan Babu, Government Pleader

Advocate for Pet/Ap. : C.S. Balagangadharan, Adv.

Judgement :

K.S. Paripoornan, J.

1. The petitioner is the Administrator of Cosmopolitan Hospital, Trivandrum. It is owned and run by a private limited company, Cosmopolitan Hospitals Private Limited. The matter arises under the Kerala Building Tax Act, 1975. The petitioner has put up, a building for the purpose of a hospital. Proceedings were initiated to assess the building under the Kerala Building Tax Act. The petitioner contended

that the building is entitled to exemption from the levy of tax under the Kerala Building Tax Act, 1975. The proceedings had a chequered career. Finally, in Original Petition No. 6950 of 1984, this court directed the Government to give an opportunity to the petitioner and decide the claim for exemption pleaded by the petitioner afresh. In pursuance thereto, the Government of Kerala heard the matter afresh and passed an order dated September 13, 1988, evidenced by exhibit P-7, holding that the petitioner is not eligible for exemption from the levy of tax under the Kerala Building Tax Act, 1975. The challenge is against exhibit P-7 order.

2. I heard counsel for the petitioner, C.S. Balagangadharan. It was argued that the building in question, constructed by the company, is eligible for exemption under Section 3(1)(b) read with the Explanation of the Kerala Building Tax Act, 1975. Section 3(1)(b) of the Act along with the Explanation provides as follows :

'3. Exemptions.--(1) Nothing in this Act shall apply to -

(a) buildings owned by the Government of Kerala or the Government of India or any local authority ; and

(b) buildings used principally for religious, charitable or educational purposes or as factories or workshops.

Explanation.--For the purposes of this Sub-section, 'Charitable purpose' includes relief of the poor and free medical relief.'

3. Exhibit P-1 is the memorandum of association of Cosmopolitan Hospitals Private Limited. Clause III of exhibit P-1 provides as follows :

'III. The objects for which the company is established are :

A. Main objects to be pursued by the company on its incorporation are :

To establish and run hospitals, dispensaries, clinical and pharmaceutical laboratories, to act as chemists and druggists. B. Objects incidental or ancillary to the attainment of the main objects are : ...

(32) To subscribe or contribute to any charitable, benevolent or useful objects of a public character, the support of which will in the opinion of the directors tend to increase the repute or popularity of the company among its employees or the public.

(33) To provide for the welfare of directors, employees or non-employees of the company and to wives and families or the dependants or connections of such persons by building or contributing to the building of houses, dwellings or by grants of money, pension, allowances, bonus or other payments, or by creating and from time to time subscribing or contributing to provident fund and other associations, institutions, fund or trust and by providing or subscribing or contributing towards places of instructions and recreation hospitals and dispensaries, medical and other assistance as the company shall think fit and to subscribe or otherwise to assist or to guarantee money to charitable, benevolent, religious, scientific, national or other institutions or objects, which shall have any moral or other claim to support or aid by the company either by reason of locality of operation or of public and general utility or otherwise.'

3. The petitioner's counsel placed reliance on Clause III-B Sub-clauses (32) and (33) of exhibit P-1 to contend that the building is used principally for charitable purposes. The Government, after referring to exhibit P-1 and the printed copy of the 8th Annual Report (1986-87) and the submission in the written statement filed by the Administrator, held as follows :

'The petitioner-institution is a private company registered under the Companies Act, 1956, and not a society registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Act, 1955. The main object of the company, according to the memorandum and articles of association of the company, is to establish and run hospitals, dispensaries, clinical and pharmaceutical laboratories and to act as chemists and druggists. Nowhere in the memorandum it is stated that the object of the activity of the company is to subserve the charitable purpose.

Further, on a perusal of the annual report of the company for the year 1986-87, produced by the Administrator, during the year ended on June 30, 1987, while the company had made an overall profit of Rs. 7,32,422, the expenditure incurred for

free treatment is only Rs. 47,873. Similarly, the expenditure incurred during the previous year (1985-86) for the purpose is only Rs. 10,369. This shows that the predominant object of the activity of the institution is to earn profit and not to function as a charitable one. Hence, the building constructed by the company is not eligible for exemption from the levy of tax under the Kerala Building Tax Act, 1975, and the request, therefore, is rejected.'

4. The question as to whether the predominant object of the institution is a charitable one and the building in the instant case is used principally for charitable purposes is largely one of fact. It should be stated that though the various sub-clauses in Clause III-B of exhibit P-1 are labelled as objects incidental or ancillary to the attainment of the main objects, they are really powers and not objects. There is a distinction between the objects of the institution and the powers of the trustees or the directors. A perusal of Sub-clauses (1) to (34) of Clause III-B in exhibit P-1 would go to show that the various sub-clauses are really in the nature of powers. We have to read the memorandum of association (exhibit P-1) as a whole in order to understand the real objects for which the company has been constituted. So read, Clause III-B and the various sub-clauses therein are only powers and not the real objects for which the petitioner-company had been constituted. The following observations of a Division Bench of this court in CIT v. Shri Shaila Industrial and Spiritual Colony Charities, : [1973]87ITR175(Ker) , are apposite in this context:

'Lord Wrenbury expressed the view in Cotman v. Brougham, [1918] AC 514 that there may be included in the objects what are not real objects of the company but are enabling powers to achieve the objects of the company. A passage from the judgment of Lord Wrenbury at page 522 may be extracted :

'The objects of the company and the powers of the company to be exercised in effecting the objects are different things. Powers are not required to be, and ought not to be, specified in the memorandum. The Act intended that the company, if it be a trading company, should by its memorandum define the trade, not that it should specify the various acts which it should be within the power of the company to do in carrying on the trade. The Third Schedule of the Act contains model forms

of memoranda of association. These ought to be followed. Section 118, Sub-section (1), enacts that those forms 'or forms as near thereto as circumstances admit' shall be used in all matters to which those forms refer.

There has grown up a pernicious practice of registering memoranda of association which, under the clause relating to objects, contain paragraph after paragraph not specifying or delimiting the proposed trade or purpose, but confusing power with purpose and indicating every class of act which the corporation is to have power to do. The practice is not one of recent growth. It was in active operation when I was a junior at the Bar. After vain struggle, I had to yield to it, contrary to my own convictions. It has arrived now at a point at which the fact is that the function of the memorandum is taken to be, not to specify, not to disclose, but to bury beneath a mass of words the real object or objects of the company with the intent that every conceivable form of activity shall be found included somewhere within its terms.'

5. Can it be said, on a perusal of exhibit P-1 or on a perusal of the 8th Annual Report of the company for the year 1986-87, referred to by the Government, that the building was used principally for charitable purposes. In order to say that the building is used principally for charitable purposes, it should be 'mainly' or 'chiefly' or 'for the most part' or 'primarily' used for charitable purposes. A perusal of exhibit P-1 shows that the main object of the company is to establish and run hospitals, dispensaries, clinical and pharmaceutical laboratories, to act as chemists and druggists. The predominant or the 'main' or 'chief' object of the company is not to subserve any charitable purpose. It is to earn profit. The fact that the directors have got the power to subscribe to any charitable objects of a public character or to subscribe to charitable or benevolent institutions will not and cannot be construed as the objects of the petitioner. Nor can it be said that the building is used 'mainly' or 'principally' or 'chiefly' or 'predominantly' for charitable purposes.

6. I am of the view that second respondent was justified in holding that the petitioner is not eligible for exemption from the levy of tax under the Kerala Building Tax Act, 1975. No interference is called for with exhibit P-7.

7. This original petition is without merit. It is dismissed in limine.

