Elisabeth Vs. State of Kerala

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Court : Kerala

Decided On : Oct-23-2002

Reported in : 2003(2)KLT533

Judge : C.N. Ramachandran Nair, J.

Acts : Kerala Building Tax Act, 1975 - Sections 3(2) and 5(6)

Appeal No. : O.P. No. 29941 of 2002

Appellant : Elisabeth

Respondent : State of Kerala

Advocate for Def. : Sojan James, Government Pleader

Advocate for Pet/Ap. : C.S. Abdul Samad and; V.D. Balakrishna Panicker, Advs.

Disposition : Petition dismissed

Judgement :

C.N. Ramachandran Nair, J.

1. The petitioner, owner of an auditorium is challenging Ext. P4 notice issued demanding building tax. The petitioner's case is that the petitioner is not liable to pay building tax in respect of the building for the reason that the building is constructed for 'charitable purposes'. The petitioner has also produced Ext.P1 trust

deed in support of the petitioner's claim for exemption. The petitioner also prays for a direction to the Assessing Authority to refer the matter to the Government to decide the issue under Section 3(2) of the Building Tax Act.

2. I heard learned counsel for the petitioner and have gone through Ext.P1 trust deed and also heard the learned Government Pleader.

3. Buildings used mainly for religious or charitable purpose or as factory or workshop are entitled to exemption under Section 3(1)(b) of the Building Tax Act. Section 3(2) provides that if any 'question arises' as to whether a building qualifies for exemption under Section 3(1) or 3A the question has to be referred to the Government. In this case it is seen that the assessment is made for the building in the names of Mr. M.J. Johnson and Mrs. Elizabath Johnson. The petitioner has not produced any document by which the property or the building is transferred to the trust evidenced by Ext.P1. In the absence of transfer of property to the trust even assuming the trust as a charitable trust, the trust cannot claim exemption in respect of the building. The petitioner has no case that the building is transferred to the trust. It is evident from Ext. P1 itself that the trust is only a family trust formed by the petitioner's husband, their children and other family members. There is no need for this Court to go into the objects of the trust or purpose of the trust because the trust has no claim over the building, which, on records, is owned by the petitioner and her husband jointly. There is nothing on record to connect the Auditorium to the Trust. The petitioner has no case that the Auditorium is constructed with Trust-fund, the corpus of which is only Rs. 5,000/-. Further even after construction the Auditorium it is not in the name of the Trust nor its owners on record are owning it on behalf of the Trust. In other words the Trust is not the owner of the building, namely the Auditorium which is assessed to tax. The Trust is also seen formed on 30.8.1999 with a corpus of Rs. 5,000/- obviously during construction of the building. The concept of 'property held in Trust for charity' and the claim for exemption on income received from the property held in Trust in the first place is by getting income tax exemption from the Commissioner of Income Tax under Section 11 of the Income Tax Act. There is no whisper about any such Claim by the petitioner. The trustee does not avail any income tax exemption, is very strange. In fact unless the trust claims exemption from income tax on the

income from the trust property, of course, the bona fides has to be doubled because no charitable institution will sacrifice substantial amount towards income tax when they are entitled to exemption under the Income Tax Act. The trust deed itself is seen created only on 30.8.1999. Since the trust admittedly does not own the building covered by Ext.P4 assessment, I do not think the trust can request for reference to the Court under Section 3(2) of the Act. The owner of the building cannot ask for reference because the building owner is not involved in any charity. It is also pertinent to note that the building tax is payable under Section 5(6) of the Building Tax Act by the owner of the building. In order to claim exemption the building must be owned by the Charitable Trust and the building should be used for charitable purposes. The petitioner cannot claim exemption in respect of a building owned by her along with her husband on the ground that they are Trustees in a family Trust created by them. In the circumstances, I do not find any question can be referred to the Government under Section 3(2) of the Building Tax Act. If the petitioner has any grievance in respect of the rate of tax or plinth area assessed, of course it is open to the petitioner to file appeal before the Appellate Authority.

4. Another issue raised by the petitioner is that a reference will involve declaration of title over the building. In other words the contention of the counsel is that the Government can declare that the building is owned by the Trust in a reference under Section 3(2) of the Act. What is to be decided under Section 3(2) is the question whether the building is used for charitable or religious purposes or as factory or workshop. In other words the decision on reference is only about eligibility of the building for exemption with reference to its use. The dispute over the title is to be settled in a civil court and not by the Government. So long as the Trust does not claim ownership of the building and its owners namely the petitioner and her husband have not assigned the building to the Trust. I do not know how the petitioner can claim exemption from building tax using the name of the Trust. The petitioner's attempt is only to avoid payment of building tax in respect of the Auditorium under cover of a Charitable Trust created for the said purpose with family members which is only a sham. Therefore, I do not find any merit or bona fides in the Original Petition. The Original Petition is therefore dismissed.