
(1975) 10 AP CK 0007

In the Andhra Pradesh High Court

Case No : Second Appeal No. 209 of 1974

A. Ganga Raju

APPELLANT

Vs

Municipal Council, Palacole

RESPONDENT

Date of Decision : 24-10-1975

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 88, 88(1)

Citation : AIR 1976 AP 312

Hon'ble Judges : Venkatarama Sastry, J

Bench : Single Bench

Advocate : P.P. Surya Rao, for the Appellant; N. Rajeswara Rao, for the Respondent

Judgement

1. The plaintiff, whose suit and appeal have been dismissed by both the Courts, has come up with this Second Appeal.

2. The plaintiff is a choultry at Palakol represented by its Executive Officer. According to the allegations the plaintiff, there are dining hall, kitchen, central hall and other rooms used for lodging purposes in the choultry. No rent is charged from any lodger for the occupation of the rooms. Only electricity consumption charges are collected from them. Free boarding is arranged for travellers and poor students. The choultry regularly provides free boarding for the poor students. The plaintiff schedule mentions four rooms. They are abutting the road and are situated in the choultry. They have been leased out by the plaintiff to Gandhi Medical Hall, Venkateswara Ayurveda Nilayam, Mahalaxmi Cut Pieces and Prabhat Sudha Khadder Vastralayam, which have separate assessment numbers respectively as 4879, 4876, 4875 and 4874. The rents realised from the tenants in these shops are exclusively utilised for the above charitable purposes. The respondent-municipality issued a notice on 5-3-1969 demanding property tax for the suit schedule four rooms also. According to the plaintiff, they are exempt from levy of any property tax u/s 88 of the Andhra Pradesh Municipalities Act, 1965, (hereinafter referred to as the Act). The Municipality has also assessed

surcharge under Act XIII of 1958 for the said shops. The levy of house tax and the demand of surcharge are illegal. Hence the suit has been filed for a declaration that the levy and demand of house tax and surcharge for the plaint schedule buildings (the four rooms mentioned in the schedule), is illegal and void and for consequently injunction restraining the respondent from collecting the same and for costs.

3. The defendant-municipality resisted the suit. According to it, the plaint schedule properties do not constitute a choultry or a part of a choultry to claim exemption u/s 88 of the Act. They have been let out for the purposes unconnected with the object of the choultry and hence the assessment in dispute are not at all illegal.

4. On the aforesaid pleadings the trial court framed appropriate issues. The main issue in the case was issue No. 1. It related to the question whether the plaint schedule properties form part of the choultry as understood in Section 88 of the Act and whether those properties are used for purposes contemplated by the said section. The second issue related to the question of exemption from the levy of property tax. On a consideration of the evidence the trial court held on issue No. 1 that the plaint schedule four rooms do not form part of the choultry as they do not come within the definition of the word "choultry". At the same time i found that the rent collected from these properties is used for charitable purposes. In view of this finding that the four rooms do not form part of the "choultry" the trial court found on issue No. 1 that the plaintiff is not entitled for exemption in respect of the said four rooms. The claim of the plaintiff in regard to surcharge was allowed and it is no more in dispute in this second appeal. In the result, the suit for declaration and injunction was decreed only in respect of surcharge relief and dismissed in respect of the relief of levy of property tax.

5. The plaintiff went up in appeal before the Sub-Court, Narasapur. The learned appellate Judge also held that these four shops are not used for the convenience of those people whose the choultry either free of rent or for rent and hence they ceased to be a choultry within the meaning of the Act. It was therefore held that the appellant could not claim exemption for the suit schedule property from levy of property tax. The appeal was therefore dismissed.

6. In the Second Appeal Mr. P.P. Surya Rao, the learned counsel for the appellant has again reiterated the same contentions. He has also placed some decisions which will be considered presently. According to the learned counsel, the four shops are situate within the same precincts of the choultry though they are abutting the road. The mere fact that they have not separate assessment numbers is immaterial. As the income derived from those shops is utilised for charitable purposes, what is all required by the statute is satisfied to claim exemption u/s 88 of the Act. The finding of the lower courts that they cannot be treated as choultry is erroneous. The learned counsel placed strong reliance upon the decision of his Lordship Obul Reddi, J, as he then was reported in *Vijayawada Municipality v. S.K.V.G.P. Choultry*, (1968 2 Andh WR 404). On the other hand,

Mr. Rajeswara Rao the learned counsel for the respondent has argued that the shops are unconnected with the pilgrims and travellers and they are not intended to provide any amenities for the pilgrims or travellers using the choultry. Hence the findings of the lower courts that the four shops cannot be treated as choultry are perfectly correct and cannot be assailed. He also further urged that merely because the income from the shops is used for charitable purposes it is immaterial so long as the shops themselves do not come within the purview of the expression "choultry" u/s 88. He has placed reliance upon the decision reported in *Sri K.P. Annasatram v. Vijayawada Municipality* (1959 2 Andh WR 323) and *Anjaneyulu v. Eluru Municipality* (1963 1 Andh LT 202). Both the counsel have also invited my attention to the decision of the Supreme Court reported in *Municipal Council, Tirupathi Vs. Tirumalai Tirupathi Devasthanam*, .

7. Before I consider the authorities, it is necessary to extract the section itself.

"88. (1) The following buildings and lands shall be exempt from the property tax:---

xx xx xx xx (b) choultries for the occupation of which no rent is charged and choultries the rent charged for the occupation of which is used exclusively for charitable purposes.

Xx xx xx xx

Sub-section (i) (b) which applies to this case, grants exemption only to choultries for the occupation of which no rent is charged or choultries where rent is charged but which rent is used for charitable purposes. It is clear from wording of the statute that the exemption is intended only for choultries as such and not for any other buildings which are not choultries. The second portion of this sub-clause specifically deals with the occupation of the choultries as such and not any shops or buildings belonging to choultries. If rent is charged for the occupation of a choultry and if such rent is exclusively used for charitable purposes, then the choultry can claim exemption. But if the choultry has got some other buildings which are not put to the use of a choultry but which are separately rented out though the rents may be utilised for the same charitable purposes within the choultry, that would not make those rooms which are not used as choultries to come within the exemption provided under this clause.

8. In this connection we have to see what is the meaning of a "choultry". A choultry is not defined in the Act. Their Lordships of the Supreme Court in *Tirupathi Municipality v. T.T. Devasthanam* (AIR 1974 SC 421) have relied upon the definition of a choultry in the Law Lexicon and other dictionaries. The Law Lexicon defines the word "choultry" as follows :

"Choultry : Chatram. A choultry is a corruption of chavadi. It means a shelter or resting place for travellers. A chatram (corruption of the Sanskrit Sathram) is a house where pilgrims and travellers are fed."

In the Shorter Oxford English Dictionary, choultry is described as an Anglo-Indian

word "being corruption of Telugu Chawdi" and its meaning is given as "Acaravanserai". In Wilson's Glossary of Judicial and Revenue terms, the word is given in different forms such as Chawasti or chouti, corruptly choultry or choultry and the meaning is given as "A public lodging place, a shelter for travellers". It is, therefore, clear that a choultry is a place which is used as a shelter or resting place for travellers. It should be meant entirely for that purpose, namely, for the purpose of providing shelter or resting place for the travellers or pilgrims whoever they may be.

9. In Kothandarama Pillai and Another Vs. The Municipal Council and Another, Krishnan Pandlai, J., also held that the essence of a choultry is that it is used as a resting place for travellers. Somayya J., in Pandara Sannadhi, Tiruvannamalai Adhinam and Another Vs. The Corporation of Madras, also observed as follows in this connection :

"The choultry may be run in one building and in another locality there may be other buildings which are not at all used as rent houses for pilgrims and which are let out to tenants for occupation or to shop-keepers for use as shops the rents derived from them may be used exclusively for running choultry. In such a case the building which is used as a rent house for travellers will alone be exempted and not the other buildings, the rent of which is being used for the running of the choultry. If the buildings themselves are not used as rest houses which is the central idea underlying the expression "choultry", they are not exempt from payment of a tax."

10. Dealing with the question as to whether any shops or buildings which are adjuncts to the choultry but which are used for the benefit of the pilgrims come within the meaning of choultry their Lordships of the Supreme Court have observed in Municipal Council, Tirupathi Vs. Tirumalai Tirupathi Devasthanam, as follows :

"Choultry is indeed an ancient institution and is principally meant for lodging of pilgrims and travellers. It is conceivable that in 1884, when the first municipal legislation was passed in Madras, such institutions were some humble sheds and other structures to enable the pilgrims to stay for a short while when they came to visit temples and other religious places. The institution like similar others elsewhere, has come to say as symbol of religious and charitable disposition of human mind translated into physical manifestation in the shape of safe shelter for the pilgrims. As man advanced and ideas grow and expand, with his ever increasing desire for comfort and convenience, the shape of the choultry must needs also change. It is, therefore, only to be expected that with the growing funds of the Dewasthanams such choultries will be constructed in a modern way catering to the needs and requirements of the pilgrims and visitors of all classes in a self-contained unit or complex. It would be necessary to look at the institution from the point of view of the predominant intention which guides the building up of the complex as a whole. The object for which a choultry is built is advanced and facilitated by making provisions for so many incidental

conveniences which the visitors and pilgrims coming from far and wide may need in order to make their short stay in the neighbourhood of the people comfortable and convenient from all points to go to and fro and face difficulties. The concept of a choultry today may, therefore, be completely different from that with which one may be familiar a hundred years ago. There must, however, be no idea of profit motive in running and administering a choultry. Besides the expenditure for running a choultry with amenities should not be made with an idea to realise it from the visitors using the same. In other words, the choultry must in truth and reality bear the hall-mark of a charitable institution and should not partake of the character of a hotel run for profit. The appellant concedes that the first floor as well as the ground floor of the building which are used for lodging of the pilgrims may be exempted from tax and indeed tax has not been realised in respect of the rooms on the ground floor of the choultry. He appellant, however, submits that the offices, shops and other concerns some of which are located in the choultry and others within the campus, cannot be considered as part and parcel of the choultry and, therefore, are not exempt from tax. We have examined the entire evidence in this essence and have given careful consideration to the findings of the High Court with regard to the same and are clearly of opinion that the choultry cannot be divorced from the other offices, shops and concerns which are mainly located within its precincts in order to render much needed and other necessary services to the pilgrims coming to pay homage to the Holy Shrine of Sri Venkateswara Swami. In the absence of a precise definition of the word "choultry" in the Act excluding such offices, shops and concerns in the precincts, we are unable to restrict the term "choultry" in the context of the economic development and improved standard of living of our people to only that portion of the building which is directly used for lodging of visitors and pilgrims. We are, therefore, of the view that the High Court is right in holding that the appellant is not entitled to charge tax on the choultry as claimed."

As seen from the above authoritative pronouncement of their Lordships a choultry cannot be divorced from the other offices, shops and concerns which are mainly located within the precincts in order to render much needed and other necessary services to the pilgrims. It means, if the shops owned by the choultry are used for purposes intended to render any service for the pilgrims who use the choultry, then the mere fact that some rent is charged for them would not matter. But, otherwise, if those shops are used for deriving some rents with a view to make profits, then those shops cannot be made part of the "choultry". In another place their Lordships have observed :

"Even then a line will have to be drawn to distinguish between what is incidental or sub-servient to the main object and purpose of the choultry and the oblique motive of profit-making to deprive the Municipality of its rightful dues."

The core of the decision therefore, appears to be that if the rents are derived with a view to make profits and not to make the shops render incidental and sub-servient use to the pilgrims, then the shops cannot claim exemption. In the case

before the Supreme Court their Lordships were dealing with the Tirumala Tirupathi Devasthanam New Choultry. It consisted of also other shops used for firewood stores, transport office, workshops, garages, the galvanized Iron Sheet sheds for parking the transport vehicles, the Railway Booking office, the Mysore Government Transport Office, the Devasthanams Sanitary Inspector's office, the Enquiry Office, garage for cars, shed for water pump, laundry, haircutting saloon, the post office and free medical dispensary. But they were all used for the benefit of pilgrims using the Choultry as such. There was only one shop which was used by the Brass Co-operative Stores which was paying a monthly rent of Rs. 30. Their Lordships held that the new Choultry with its expanding beneficial complex as established by evidence was not viable by itself but maintained in a substantially large measures out of the Devasthanam funds predominantly in the interest of numerous visiting pilgrims from far and wide and therefore, were exempt from tax u/s 88 (1) (b) (corresponding to Section 88 in the new Act). Dealing with the rent of Rs. 30 derived from the Brass Co-operative Stores. Their Lordships hold that as the rent was exclusively used for the purpose of the choultry, which is indeed a charitable purpose, there was no bar from claiming any exemption.

11. Applying the above test to this case we have to see whether the four rooms that are now in question are really intended to provide any necessary amenities or incidental or sub-servient use to the pilgrims or travellers who are lodging in the choultry. The trial court considered the evidence of P.W. 1 the principal witness for the plaintiff, who clearly admitted that these four shop rooms were let out for business purposes and they are not used for the purpose of travellers. P.Ws. 2 and 5 who happen to be some of the tenants of these shops have also deposed that the rents were paid by them for their own business which had nothing to do with the use of the choultry as such. It cannot, therefore, be said that the four rooms are merely adjuncts to the choultry which are put to the same use as that of the choultry itself. Hence in these circumstances the finding given by both the courts that the four rooms are not part of a choultry has to be accepted as correct.

12. If the four rooms are not really part of the choultry, the fact that the income from the said four rooms was utilised for charitable purposes, namely for providing free food to travellers and poor students within the choultry, would not make any difference in regard to its liability for tax u/s 88. The provisions of Section 88 (1) (b) cannot be said to have been satisfied because those four rooms cannot be called a choultry within the meaning of that provision and the rent derived from them is not a rent charged for the occupation of a choultry as such. The finding of both the lower courts that the use to which the rents from these shops was put would not enable the plaintiff to claim exemption, also is correct and has to be upheld.

13. In *Anjaneyulu v. Eluru Municipality*, 1963 1 Andh LT 202, their Lordships Chandra Reddy, C.J. and Chandrasekara Sastry, J., were dealing with the case

where a portion of the choultry was used for shops, as in this case, which were let out. Their Lordships held that those four shops were not entitled to exemption from tax by observing as follows :

"This a part of the clause, in our opinion, is attracted only to cases where rent is charged in regard to a building used as a choultry i.e. where rent is collected from persons who temporarily occupy the rooms, such as pilgrims and travellers, and it has no application to cases where the building is not used as choultry. "to cases where the building is not used as choultry."

Their Lordships laid stress on the use of the building as choultry as a necessary condition for claiming exemption.

14. In *Sri K.P. Annasatram v. Vijayawada Municipality*, (1959 2 Andh WR 323) Seshachalapathi , J., was considering the case wherein ten buildings were involved, which were situated outside the precincts o the choultry. The learned Judge held that they cannot come within the definition of a "choultry" and therefore, are not entitled to exemption.

15. In *Vijayawada Municipality v. S.K.V.G.P. Choultry* (1968 2 Andh WR 404) Obul Reddi, J., as he then was also dealt with a similar case. After calling for a finding from the lower court it was held that the choultry was not entitled to exemption as the income from the rooms was not being used exclusively for charitable purposes. On the basis of that finding the Second Appeal was allowed. His Lordship did not consider the question now under acquisition, as to whether those rooms are really part of the choultry within the meaning of s. 88 or not. I do not, therefore think that that decision can be of any avail to the appellant herein.

16. Their Lordships of the Supreme Court considered the decisions of the Bench in *Anjaneyulu v. Eluru Municipality* (1963 1 Andh LT 202) and did not specifically overrule the same. The principle laid down in the said decision also, in my opinion, applies to this case. In any event, as per the test laid down in the decision of the Supreme Court, since these four rooms are not intended to make any provision for any incidental conveniences for the visitors and pilgrims to the choultry or to render any other services to them, they cannot be treated as part of the choultry entitled to exemption u/s 88 of the Act. In this view I am satisfied that the decision of the lower Courts is correct and the Second Appeal has to be dismissed. It is accordingly dismissed with costs. No leave.

17. Appeal dismissed.