

(2014) 10 KL CK 0012
In the High Court Of Kerala
Case No : W.P.(C) No. 28319 of 2014

Bhagyodayam Company

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 13, 14, 3, 3(1), 3(1)(b)

Citation : (2015) 1 KHC 317 : (2015) 1 KLT 34

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : N.J. Mathews, Madhu N. Namboothiripad and Susan Mathew,
Advocates for the Appellant; Shoba Annamma Eapen, Sr. Government Pleader,
Advocates for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The petitioner, M/s. Bhagyodayam Company, incorporated in 1927 in the erstwhile State of Cochin, under the relevant provisions of the then existing Companies Act, is before this Court, challenging the correctness and sustainability of Ext. P7 order passed by the Government; whereby the claim for exemption mooted from the part of the petitioner has been declined, holding that the building owned and possessed by the petitioner is not principally made use for any "charitable purpose". The petitioner claims to be a charitable institution as certified by the Income Tax authorities and also as disclosed from Ext. P1 Memorandum and Articles of Association of the Company. It is stated that Ext. P2 communication has been issued by the authorities of the Income Tax Department to the effect that, the income derived by the petitioner is being utilized for charitable activities and that, it is an institution recognized by the Income Tax Department. When the assessment was finalized in respect of the building owned by the petitioner under the Kerala Building Tax Act, the petitioner filed a revision petition as envisaged under S. 13 of the Kerala Building Tax Act before the 4th respondent. In view of the coercive proceedings, the petitioner approached this Court by filing O.P. No. 5921 of 1998, which was disposed of as per Ext. P5 judgment dated 8.9.2005, directing the revisional

authority to consider and pass appropriate orders on the revision petition. The case of the petitioner is that, instead of complying with the direction, the course pursued by the fourth respondent was by simply passing the ball from his court to the first respondent seeking for interference and it was accordingly that, Ext. P7 order was passed by the 1st respondent, rejecting the relief, which in turn is under challenge.

2. Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents in detail.

3. During the course of hearing, the learned counsel for the petitioner points out that, the Government is absolutely having no power under S. 14 of the "Act", to have dealt with the issue, by virtue of the scheme of the statute. Reference is made to S. 14 of the Kerala Building Tax Act, which reads as follows:

"Section 14. Power of revision of the Government:-The Government may, on application by any person aggrieved, call for and examine the record of any order passed by the District Collector suo motu under Section 13, for the purpose of satisfying themselves as to the propriety or regularity of such order and pass such order in reference thereto as they think fit:

Provided that the Government shall not revise any order under this section after the expiry of sixty days from the date on which that order was communicated to the applicant:

Provided further that an order to the prejudice of any person shall not be passed under this section unless that person has been given a reasonable opportunity to show cause against such order."

The learned counsel for the petitioner also places reliance on the decision rendered by another learned Judge of this Court as per the decision reported in *Karunakaran v. Tahsildar* (1990 (1) KLT 869) holding that, the power of the Government under S. 14 is very limited, which is only in respect of the orders passed by the District Collector, "suo moto" invoking the power under S. 13, which is not the position in the instant case.

4. After hearing the learned counsel and after going through the materials on record, this Court finds that, when the proceedings were pending consideration before the District Collector by way of revision, a claim for exemption was admittedly put forth by the petitioner, with regard to the nature of the petitioner's institution as a charitable organization, since the amount derived from the building was allegedly being used for charity. Exemption from the purview of the Kerala Building Tax Act is provided under S. 3(1) of the Act, which reads as follows:

"Section 3. Exemptions:-(1) Nothing in the Act shall apply to-

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

(b) building used principally for religious, charitable or educational purpose or as factories or workshops.

Explanation--For the propose of this sub-section, "charitable purpose" includes relief of the poor and free medical relief."

5. If any claim is put forth for exemption with reference to S. 3(1), it is always obligatory for the concerned authority before whom such claim is raised, to have the matter referred to the Government for final decision as provided under S. 3(2). The said provision reads as follows:

"Section 3(2). If any question arises as to whether a building falls under sub-section (1) or under Section 3A, it shall be referred to the Government and the Government shall decide the question after giving the interested parties an opportunity to present their case." It was pursuant to such a claim raised by the petitioner, that the matter was referred to by the 4th respondent by virtue of the mandate of S. 3(2), to be considered by the Government and it was accordingly, that the matter was considered by the Government who passed Ext. P7 order. The idea and understanding of the petitioner that, Ext. P7 order has been passed by the Government under "Section 14" of the Act is thoroughly wrong and misconceived. The relevant provision has been referred to in the very same order, in the penultimate paragraph, making a reference to the claim under S. 3(1)(b). This being the position, this Court does not find it as a fit case to call for interference.

6. Even otherwise, the factual position disclosed from Ext. P7 shows that the petitioner is the owner of the building having different floors and different extents/plinth area in the concerned floors. Utilization of the building has been dealt with in detail in Ext. P7. It is seen that, substantial portion is given on rent to Federal Bank, K.S.E.B. and such other institutions. Similarly, considerable portion of the building is also being used for considerable purpose. In another portion, the petitioner themselves are running an office in connection with "chitty transactions" and is generating income from such activities. It is true, that the petitioner has been certified by the Income Tax Department as a charitable institution under the relevant provision of the Income Tax Act. But that by itself cannot be a green card for getting exemption under the Kerala Building Tax Act as the relevant consideration under the two enactments are entirely different. As far as the Kerala Building Tax Act is concerned, it is not with reference to the nature of the institution, but with reference to the activity that is being pursued in the building. So as to get exemption under S. 3(1)(b), it is necessary that the petitioner's building should be principally used either for religious, charitable or educational purpose. The factual particulars and the split up figures as given in Ext. P7 clearly reveal, that the building belonging to the petitioner is not being "principally used" for charitable activities. It may be true that the petitioner is making use of a portion the income being generated from the building for the purpose of charitable activities. That will not exonerate the petitioner from the liability under the Kerala Building Tax Act, in view of the law declared by the

Apex Court on the point as per the decision reported in Sh Medical Centre Hospital Vs. State of Kerala and Others, . In the above circumstance, interference is declined and the Writ Petition is dismissed. However, considering the persuasive submission made by the learned counsel for the petitioner, this Court finds it fit and proper to grant a chance to the petitioner to liquidate the liability in a phased manner. Accordingly, the petitioner is permitted to satisfy the entire outstanding liability by way of "three" equal monthly instalments, the first of which shall be effected on or before 30.11.2014, followed by the next two instalments to be effected on or before the 30th of the succeeding months. Subject to this, the recovery proceedings, if, any, shall be kept in abeyance for the time being. It is also made clear that, if any default is committed in satisfying the liability as above, it will be open of the respondents to pursue such steps for realization of the entire amount in a lump, by pursuing such steps from the stage where it stands now.