(1995) 09 KL CK 0051

In the High Court Of Kerala

Case No : O.P. 5873 of 1992-Y

Chackravarthy Hostel APPELLANT

Vs

Municipal Commissioner and Another RESPONDENT

Date of Decision : 20-09-1995

Acts Referred:

Kerala Municipalities Act, 1960 — Section 101, 101(1)
Kerala Municipalities Act, 1994 — Section 295D
Kerala Panchayat Act, 1960 — Section 72, 72(1)

Citation : (1995) 09 KL CK 0051

Hon'ble Judges : V.V. Kamat, J

Bench : Single Bench

Advocate : Siby Mathew, for the Appellant; V.M. Kurian, for the Respondent

Judgement

V.V. Kamat, J.—The question that falls for examination and consequent decision in this petition is to whether the Petitioners would be entitled to the property tax exemption as contemplated in Section 101(1)(cc) of the Kerala Municipalities Act, 1960. The said provision requires reproduction for the purposes of this petition. As is relevant it enacts that the following buildings and lands shall be exempt from the property tax if they are buildings used for educational purposes, including hostels, public buildings and places used for the charitable purpose of Sheltering the destitute or animals and libraries and play grounds which are open to the public. At the first blush it would be apparent that the expression is of an inclusive nature. What is required the user of the building for educational purposes and other instances obviously enacted on the basis of inclusive nature would have to be considered as illustrative in character, the dominant aspect would be the user of the premises in question for educational purposes. It is also necessary to emphasise that this provision (cc) was not in the text of the section on the date of the enactment but has been added subsequent thereto by Act 29 of 1963. Even then reading the other clauses of the section as originally framed the emphasis is on the user of the premises, the occupation of the premises, the facet of setting apart of the premises as the real question going for the determination of the ultimate benevolent situation of the premises being exempted from property tax. An attempt to trace the inbuilt help would not be a futility. Clause (a) speaks of a place set apart for public worship and considers it irrelevant as to whether it is actually so used or the requirement of its user for no other purpose, laying emphasis on the place being set apart for public worship. Similarly the user of the place has public worship is also carried forward to the place attached thereto, separating those used for residential purposes with reference to the places attached to the public worship. The emphasis in Clause (b) also as specified gives importance to the situation of legitimate annexation to the places of worship. The language of Clause (c) would also be found not to be really different relating to the choultries to be understood in terms of its character of occupation to be understood when no rent is charged and the charging of rent with regard to the exclusive use thereof for charitable purposes. Subsequent Clause (d) also emphasise the character of occupation and user of the places for public worship either by a society or by a body for a charitable purpose. This inbuilt material provides the main factor that goes a long way in appreciating the claim for exemption of the property tax in the context. It will have to be appreciated that the use of the place, setting apart of the place in question has to be understood in terms of the purpose which is to be ascertained on the basis of the material provided by the factual matrix.

2. The user of the premises for educational purposes has also to be appreciated on the basis of a very wide spectrum. The proper understanding of what is an educational purpose may not be really necessary for the purposes of this petition. However all that is included in going to make up a better man from the context in question is accepted as an educational process. The genesis of understanding in the context would convey to us that education would have to be understood as everything that is required as a tool in the art of man making. In the process taking into consideration of the media available as tools of education would have to be understood as necessary modes of understanding as to what the educational purposes would mean. The progress in the field of understanding as to what is meant by education has also undergone a rapid change and a fast development.

3. In the olden days education was understood to be what would make available to a person a better standard of life. Education was understood to be a means of taking a person into a better society. This was what was understood as an immediate object of taking education through the University. Thereafter education was understood as a means of development of the faculties of the personality of the individual. It was thereafter that education was understood as a situation which would make a better man of tomorrow. This State has seen a greater thinker in Sree Narayana Guru who accepts anything that would make a better man as education and the necessary religion not having any attachment to a particular sect or particular religious dogmas. The process of understanding the legislative provision giving certain advantages of tax exemption to those who are engaged in the educational process would have to be approached on the basis of

what we understand by education. In the days of facilities of distant education it would be an exercise in futility to restrict the understing of the provision with regard to as to whether the place is attached to a college or as to whether the place is attached to the hostel itself or the place is attached in any other mode of attachment. The situation will have to be understood not also on the basis of what was thought about it with regard to the user as would be available from the documents on record. The situation will have to be appreciated on the basis of the material that is placed on record with regard to the user of the premises.

4. So long as the statutory provision of tax exemption is available such a provision will have to be appreciated in the context of its user for the educational purpose as is understood in the context as stated above. It is not possible to approach the question in a restricted way especially in the process of understanding the taxation provision because it is elementary that the imposition and consequent justification of a tax has to be understood not on the basis of a situation of preponderance of probability but any other way in which taxation or the levy of tax gets justified. The provision is abundantly clear and is understood by this Court Sr. Mariatta v. State of Kerala-1981 KLT 80 also accordingly to state that buildings defined under the section are exempted for various purposes. One of them being buildings used for educational purposes. It is the user that makes the situation of relevance available and there is no scope to find out as to whether it is a recognised college or an institution receiving grants from the Government or any other institution requiring recognition and having been recognised as a consequence thereof. All that is required is the material in regard to the user for educational purpose as is commonly known what is required to be considered is the dominant user of the premises in question. If the material on record shows that the students are found residing that arrangements are made for their study with reference to any intellectual discipline either in the process of preparation for examination, the user will have to be appreciated as educational purpose.

5. The legislative wisdom is unfathomable as well as unquestionable. In the present proceedings what is required to be considered is as specified above (Section 101 of the Kerala Municipalities Act, 1960). It is curious that this provision is conspicuous by its absence in the new legislation in the context (Section 295D of Kerala Municipalities Act, 1994, Act No. 20/94 having come into force on 30th May 1994) wherein this provision of exemption of tax is limited in its application only to the recognised educational institutions and to the institution in possession of the educational institution. There is also however the provisions of Section 72 of the Kerala Panchayats Act, 1960 which is still in force and on the statute book providing property tax exemption to buildings used for educational purpose and an identical provision is to be found see Section 72(1)(d) the provision in the new Panchayat Raj Act is also similar parimateria to the Kerala Municipalities Act, 1994.

6. The situation of the present proceedings would have to be approached from

the legal provision governing the situation as to be found in Section 101 of the Kerala Municipalities Act, 1960 in regard to this position even subsequently this Court M. Mathe v. Executive Officer-1984 KLT 310 has emphasized that what matters is the user of the building and if it is used for educational purpose it is eligible for exemption. The position of law did not accept a restrictive approach, did not confine it to the owner of the building and denied the tenant the advantages of its application, did not also confine its limits to the factual availability of attachment to an educational institution and did not also insist that the situation have it appreciation extended to other relevant situations other than the user itself.

7. The above discussion will show that the exemption is co-relative with the user of the premised for an educational purpose. It would also become at once clear that the entitlement to the exemption is coterminous with the user of the premises in the context of the time of such user. In other words it would follow that so long as the user is understood to be for educational purpose whether the user has an element of attachment to educational institution or not its user in isolation that will be a consideration of grant of exemption. As a corollary it would also be available that this exemption would continue so long as the premises is understood with regard to its user for educational purposes. It is also possible to contemplate various kinds of concessions available with reference to the educational character of the purposes. Exemptions aye also possible in the other categories of situation of taxation. Other taxation statutes also speak of exemption and concessions Understandable and justifiable on educational purposes. Donations get exempted, other incidences of taxation also speak of concession in the context. In all these situations it is the purpose which has a dominance in the matter of consideration. It may be that at a given point of time the purpose of the user of the premises may be for educational purpose. However there is no guarantee of its continuance indefinitely thereafter. Therefore it will have to be seen and considered as to whether the user is for educational purposes at a given point of time. This would be irrespective of other possibilities, it may be that there may not be any prohibition for the change of user or an abandonment of the present user in any manner and that would not disentitle the claimant in the matter of exemption of tax for educational purpose. The relevance is that at the time of consideration of the claim it is the user of the premises that would be a matter of relevance. It would not be an acceptable proposition to deny exemption on the basis of a possibility in future that the use is likely to be abundant. This is in view of the fact that the exemption is with reference to a tax on property which is leviable for the period under consideration.

8. These aspects will have to be applied to the factual matrix of the present petition.

9. Chakravarthy Hostel is a concern of Chakravarthy Group (registered), Kothamangalam. It is solely used as a hostel for the engineering students of Mar

Athanasious College of Engineering, Kothamangam. The peculiar situation as pleaded in the petition is that the college does not provide hostel facilities to the new entrance except those who are from the other states. It is averred that on an average there are about 340 new entrance as against total strength of 2,000 students. The college can accommodate only 525 students out of them.

10. Particulars with regard to the hostel are also given in para 3 of the petition. For academic year 1988-89 in question about 199 students have availed the hostel facilities in the 42 rooms available. It is specifically stated that no outsiders are admitted to the hostel and it is mainly meant only for the students of the College. It is also emphasised that private motive is absent and the social service aspect is prominent. It is added that retired Professors are requested to make tuition facilities available to the inmates of the hostel.

11. It appears that inspite of the above position and in spite of legal entitlement to take resort to Section 101 referred to above, for the years 1988-89, 1989-90 an amount of Rs. 2,060 was paid as property tax and even thereafter for the years 1990-91 and 1991-92 Rs. 1,300 was paid as property tax. In spite of there being no liability in regard thereto utterly through inadvertence.

12. This position is preceded by a representation to the Respondent No. 1 (Ext. P-1) by an order (Ext. P-3) the prayer was rejected, observing that the Petitioner is collecting charges separately for furniture, establishment expenses and for concurrent charges in addition to the food served. It is also added that some canvassing was done by the Petitioner with the parents for the admission of students, concluding with the observation that there is a profit motive in view of the fact that there are charges.

13. The approach of the appellate authority was also a futility in view of the order (Ext. P-9) dated 10th April 1992, translated copy of which is placed on record. The appellate authority has observed in the following manner:

Though documents have been produced to show that the said building is used as a residence for the students of the Engineering College, there is no law prohibiting it being let out to outsiders, who are not students. If the Appellant wants to let out it to outsiders who are not students, he is free to do so. It is seen that there are no law preventing such kinds of activities.

It is observed that on interpretation only hostels run without, a profit motive for the benefit of the students and for which only nominal charges is realised will be included in the definition of the hostel.

14. Even apart therefrom perusal of the counter of the Municipal Commissioner-appellate authority, filed in this petition the factual position is made abundantly clear when it is averred that it is a lodging house provided boarding and lodging facilities and main occupants of the building are students undergoing studies in the Mar Athanasious College of Engineering, Kothamangalam. It is further placed on record that each student is charged a minimum of Rs. 185 per month for bed

and establishment charges during the first year of their business. Food is changed extra. It is also seen that a fabulous amount of Rs. 1,500 is collected as caution deposit.

15. Additionally in the counter reference is made to the contents of the partnership deed on the basis of which the firm came into existence with the object of carrying on business and the building in question was constructed as a part of the business activity. Reference to the document would show that the object of the partnership is also to purchase land to construct a lodging house for students and Ors. . Further in the counter it is urged that the Petitioners can accommodate persons other than the students, simultaneously emphasising that it is a matter of fact that Ors. do not seek accommodation along with the students. The precise averment in the context is necessary for reproduction from paragraph 5 of the counter to the following effect:

The Petitioner is entitled to accommodate any other person, though as a matter of fact Ors. do not seek accommodation along with students.

In addition thereto even the factual averment with regard to the training facility is not even disputed and it is alleged that it is only to attract occupants and to oblige retired Professors.

16. There are other averments with regard to the assessment on the basis thereof for the earlier years which is an undisputed position even in the petition that an averment that this was done and would not be a fetter to the recognition of legal entitlement. Factual matrix discussed herein, before would make it abundantly clear that the undisputed position is that the occupants are students exclusively and that too of one Engineering College referred to above. Not only that the hostel is occupied by the students but arrangements axe made for their tuitions, on the request made to the retired Professors, in the cootext. The material on record with regard to the payments accepted would have to be understood ap such that the accommodation is not free but concessional at moderate rates as compared to the existing living requirements and standards. The material on record shows that the user is exclusively for educational purposes. It is also not possible to brand it as done for a profit motive. On the basis of the material on record the situation is undisputable that the Petitioners would be entitled to exemption u/s 101(1)(cc) of the Kerala Municipalities Act, making it clear that any deviation in future with regard to the character of the use of the premises and also with regard to the change of law as stated above during the course of the judgment, the Petitioners would be exempt from payment of property tax as stated above.

For the above reasons petition succeeds and the rule is made absolute as above.