(2001) 12 KL CK 0060

In the High Court Of Kerala

Case No : O.P. No. 31397 of 1999

Devamatha Hospital — APPELLANT

Vs

Tahsildar — RESPONDENT

Date of Decision : 24-12-2001

Acts Referred:
Constitution of India, 1950 — Article 226
Kerala Building Tax Act, 1975 — Section 3(1)

Citation : AIR 2002 Ker 190 : (2002) 1 KLJ 105

Hon'ble Judges : K.K. Denesan, J

Bench : Single Bench

Advocate : Vijayan Nair, for the Appellant; Raju Joseph, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.K. Denesan, J.—Petitioner-institution is a hospital owned by a religious order of catholics and is run in furtherance of charitable activities. The grievance of the petitioner is that inspite of the respondents recognising the hospital as a charitable institution and admitting its right to get exemption from payment of building tax under the Kerala Buildings Tax Act, 1975, (for short ''the Act'') that benefit is not extended to the ''doctors'' quarters'' constructed by the petitioner. This Original Petition is filed challenging Exts. P3, P6 and P6(a) proceedings of the respondents rejecting the request for exempting the doctors'' quarter u/s 3(1)(b) of the Act.

2. Initially the 1st respondent assessed the doctors'' quarter to building tax as per Ext. P3 proceedings dated 18.5.1998. The petitioner sought the matter to be referred to the Government u/s 3(2) of the Act which directs the assessing authority to make a reference to the Government for its opinion on the question of exemption. Against this refusal the petitioner approached this Court by filing O.P.No. 13587 of 1998. This Court by judgment dated 21.7.1998 dismissed that Original Petition. Against that judgment the petitioner filed W.A. No. 1550 of

1998. A Division Bench of this Court set aside the judgment of the learned Single Judge directing that the matter will be referred by the assessing officer to the State Government under Sub-section (2) of Section 3 of the Act, which will decide the question of exemption after hearing the parties. In pursuance of that judgment, the 2nd respondent-Government has passed Ext. P5 order dated 17.6.1999 refusing to grant the exemption sought for the petitioner. The 1st respondent Tahsildar thereupon passed Ext. P6 assessment order dated 2.11.1999 and issued demand notice evidenced by Ext. P6(a). It is to be noted that there is no prayer to quash Ext. P5.

3. Learned counsel for the petitioner submits that exemption is available to the residential quarters of doctors because quarters are integral part of the hospital building. Section 3(1) of the Act reads as follows:

"3. Exemptions.

(1) Nothing in this Act shall apply to:

(a) building 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 purposes or as factories or workshops".

4. The contention of the petitioner is that when the hospital building is recognised as one principally used for charitable purposes and is exempted from tax on the ground that free medical aid is a charitable activity, the same yardstick should apply to the doctors'' quarter constructed in relation to the self-same medical institution.

5. In the counter affidavit filed by the 1st respondent it is averred that the building in question is one newly constructed by the petitioner outside the hospital compound where no free medical aid is given. The quarters are meant to be used for residential purposes. It is seen from Ext. P6 that the plinth area of the building used as doctors'' quarters is 901.62 M2. It is fairly a big building and not a small one meant to be used by the medical officer on duty. The building is outside the hospital compound and the main purpose is to use it as residential quarters. Hence the exemption available to charitable institutions cannot be made available to the said building.

6. As against the above arguments advanced by the learned Government Pleader, the learned counsel for the petitioner submits that the location of the hospital is such that unless the hospital authorities provide residential facilities to the doctors, most of them may not accept employment in the hospital.

7. From the rival contentions made on behalf of the petitioner and the respondents, it is clear that the only question to be answered is whether doctors'' quarter constructed by the petitioner is principally used for charitable purposes so as to entitle that building for tax exemption. It is true that the hospital

building of the petitioner is principally used for charitable purposes. But the doctors'' quarter which is fairly a big building situated outside the hospital compound and intended to be used by the doctors of that hospital for their residential purpose is not one principally used for charitable purposes. Such a building purpose-wise does not form an integral part of the hospital. Explanation to Sub-section (1)(b) of Section 3 says that for the purposes of the said sub-section "charitable purpose" includes relief to the poor and free medical relief. As pointed out in Ext. P5 order, no free medical aid is rendered to the poor in the quarters. No contrary claim is made by the petitioner in the Original Petition. Hence the doctors'' quarters in the facts and circumstances of this case has to be separately viewed from that of the hospital. I am unable to accept the contention of counsel for the petitioner that unless the hospital authorities contract quarters for the medical officers/doctors in the sub-urban area where the petitioner-hospital is functioning, doctors may not accept employment in the hospital, as a valid ground to bring such residential building within the fold of Section 3(1)(b) of the Act. The building in question cannot be compared with a small building which is intended to be occupied by the medical officer on duty in some hospitals.

8. The provision that provides for exemption from tax takes in not only building used principally for charitable purposes but also for educational purposes or as factories or workshop. Residential quarters intended to be occupied by the teaching or non-teaching staff of a college or school or University cannot be treated as building used principally for educational purposes. Though a factory owner may construct quarter for officers and employees, such quarters themselves are not factories.

9. The object of the Act is to levy tax on buildings as and when their construction is completed. This is a one-time tax. A law which thus enacted by the Legislature to generate revenue has to be understood keeping in mind the purpose for which it is enacted. The provisions of the statute have to be strictly construed. A provision which exempts certain classes of buildings from taxation cannot be construed so liberally as to defeat the main object of the impost.

10. I do not find any error in the impugned orders warranting interference of this Court under Article 226 of the Constitution of India.

11. Under the circumstances I hold that the newly constructed residential building outside the hospital compound and intended to be used as doctors'' quarters having a plinth area of 901.62M2 is not entitled to exemption from building tax.

The Original Petition fails and is accordingly dismissed.