(1990) 08 KL CK 0015

In the High Court Of Kerala

Case No : O.P. No. 7025 of 1986 J

Father Joseph Elamkunnapuzha — APPELLANT

Vs

State of Kerala and Another — RESPONDENT

Date of Decision : 30-08-1990

Acts Referred:

Constitution of India, 1950 — Article 19(1), 26, 30(1), 301
Kerala Panchayat Act, 1960 — Section 68, 68(1), 72, 72(1)

Citation : (1990) 08 KL CK 0015

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : M.I. Joseph and Thomas Varkey, for the Appellant; Government Pleader for Respondent No. 1 and Asok M. Cherian, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—Two contentions are raised in challenge of the order Ext. P-2 of Government which confirmed the levy of tax u/s 68 of the Kerala Panchayats Act 32 of 1960 (the Act) on the residential quarters of doctors working in one Mary Immaculate Hospital, of which the Petitioner is the Director. I shall quote Sub-sections (1) and (2) of Section 68 for purposes of reference:

68(1) Every Panchayat shall in accordance with the rules prescribed for the purpose levy a tax on all buildings (other than huts and buildings exempted by the provisions of this Act) in the Panchayat area at such percentage of the net annual rental value of the building as may be fixed by the Panchayat by resolution, subject to a maximum of ten per cent and a minimum of six per cent.

(2) The building tax shall be levied annually and be payable in two equal half-yearly instalments.

I may mention here that Section 72(1)(f) exempts charitable hospitals and dispensaries from payment of the tax. But the explanation to this Sub-section has clarified that the exemption will not extend to residential quarters attached to hospitals. I shall extract the explanation as it is relevant in dealing with the second contention raised by the Petitioner:

The exemption granted under this section shall not extend to residential quarters attached to schools and colleges not being hostels or to residential quarters attached to hospitals, dispensaries and libraries.

2. Petitioner states that the Mary Immaculate Hospital is a charitable institution established by the Roman Catholic Church, a religious denomination entitled to the fundamental right under Article 26(a) of the Constitution. The Petitioner''s first contention is that the imposition of building tax u/s 68 on residential quarters attached to charitable hospitals established and maintained by a religious denomination violates its fundamental right guaranteed under Article 26(a) of the Constitution to establish and maintain institutions for religious and charitable purposes. It must be noted here that the hospital building as such is exempted from payment of the tax and the dispute is only in relation to the residential quarters.

3. I find absolutely no substance in this contention. It was nowhere contended and it was nowhere established that the hospital in question was one established by a religious denomination. Even assuming it is so, I am unable to hold that the imposition of the tax in question violates the fundamental right under Article 26(a). The tax on buildings levied u/s 68 is one of a general nature, imposed on every building, other than those exempted u/s 72. It is one levied to raise the much needed resources for panehayats to enable them to meet their administrative expenditure and to perform the duties and obligations enjoined by the Act. The primary purpose behind the provisions in Section 68, as in the case of every other measure of taxation, is the raising of revenue for panehayats for their purposes. It is not a provision intended to fetter the establishment or maintenance of any institution by any person, whether a religious denomination or otherwise. It is a tax for general purposes. The very purpose of a tax generally is to raise revenues for Government, although occasionally it partakes also of regulation. As long ago as in 1819, Marshall, C.J. had observed:

The power of taxing the people and their property is essential to the very existence of the Government and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the Government may choose to carry it.

Mc Culloch v. Maryland (1819) 4 Wheat 316 : 4 L.ED. 579. It was felicitously stated by Justice Holmes:

Taxes are what we pay for civilised society. I like to pay taxes. With them I buy civilisation.

Taxes are necessary for the functioning of Government, and its organs. The object of taxation thus being generally to provide the wherewithal for the State to carry on the administration, and to carry out the developmental projects and activities, I find it impossible to accept the plea that the levy u/s 68 acts as a restriction on the fundamental right under Article 26(a).

4. What is guaranteed by Article 26(a) is the, right of a religious denomination to establish and maintain institutions for religious and charitable purposes. The imposition of the tax in question is not in any manner restrictive of the fundamental right of any person to establish or maintain any institution. So far as I could see, imposition of this tax has no direct effect on the establishment or maintenance of any institution. If at all, it only erodes marginally the income that may be derived from the activity carried on in the institution. The effect, if any, is indirect and is in any event insufficient to be an infraction of the right under Article 26(a). Far from restricting or interfering with the fundamental right under Article 26(a), the small contribution to the panchayat funds by way of tax enables the denomination to enjoy the benefit of the panchayat''s community services, thereby facilitating the very exercise of the fundamental right of maintaining the institution.

5. The right under Article 26(a) is analogous to that under Article 30(1). It is now firmly established that the impact of a regular measure of taxation, where the burden on the institution concerned is the same as that borne by others engaged in different forms of activity, is insufficient to constitute an abridgement of the fundamental right under Article 30(1). (See in this connection, The Ahmedabad St. Xavier''s College Society and Another Vs. State of Gujarat and Another, , among others). It is also beyond dispute that the levy of tax per se is not a restriction on, or abridgement of any freedom, be it the one under Article 19(1)(g) or that under Article 301. (See in this connection Ujjam Bai v. State of Uttar Pradesh AIR 1962 S.C. 1521, Bhopal Sugar Industries Ltd. v. Sales Tax Officer AIR 1967 S.C. 549, Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, and Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another, .

6. These principles are applicable to Article 26(a) as well. Therefore, no right of any religious denomination to establish and maintain institutions for religious and charitable purposes is infringed by the imposition of the tax u/s 68.

7. The second contention which on the face of it is untenable, is that the buildings used as doctors'' quarters, form part of the charitable institution, and are therefore, liable to be exempted u/s 72(1)(f). This contention only needs to be stated and rejected, in view of the Explanation to Section 72(1) extracted earlier, which states that the exemption under the section shall not extend to residential quarters attached to hospitals, dispensaries and libraries. An exemption provision has to. be strictly construed and unless the claim for exemption falls squarely within the provisions, it cannot be granted. No person has a right to claim any exemption de hors the statutory provision. The Explanation to the section is specific in excluding residential quarters of doctors attached to charitable hospitals from the purview of the exemption. This is sufficient answer to the claim made by the Petitioner.

The original petition is accordingly dismissed. The Panchayat has been unnecessarily drawn, into this litigation. Funds of Panehayats are meant for better utilitarian purposes of benefit to the public, and not for being spent on unproductive litigation. The Petitioner will therefore, pay costs to the second Respondent Panchayat inclusive of Advocate''s fee in the sum of Rs. 500.

