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**(1977) 11 MP CK 0013**  
**In the Madhya Pradesh High Court**  
**Case No : M.P. No. 323 of 1976**

Laxminarayan Sharma

APPELLANT

Vs

Property Tax Officer, Shajapur

RESPONDENT

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**Date of Decision :** 03-11-1977

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (1978) JLJ 17

**Hon'ble Judges :** S.R. Vyas, J;B.R. Dubey, J

**Bench :** Division Bench

**Advocate :** K.B. Saxena, for the Appellant; K.L. Goyal, Government Advocate, for the Respondent

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## Judgement

1. This is a Petitioner under Articles 226 and 227 of the Constitution of India and is directed against an order levying tax on the building in question-a Dharmashala under the provisions of the M.P. Nagariya Sthawar Samapattikar Adhiniyam, 1964 for the years 1966-67, 1967-68,1968-69 and 1969-70.

2. Briefly stated the facts giving rise to this petition are these:-The Petitioner Laxminarayan and his father Gokuldas had constructed a building in Shajapur known as "Shri Gopal Krishna Dharmashala" in the year 1943 and had dedicated the same for the exclusive use as Dharmashala by members of all communities without any distinction of race, caste, sex or religion. It was to be used for temporary stay by any person coming to Shajapur subject, however, to certain rules (Annexure A) framed by Gokuldas. Consequent upon the construction and dedication of this building for use as Dharmashala people used to come and stay there. For the stay travellers and visitors were required to pay very nominal-rather nil charges and the charges so collected were exclusively used for the maintenance, repairs etc., of the Dharmashala as also for payment of salary to the Choukidar, sweeper etc. Some time later some accommodation was added to the Dharmashala and is let out on rent. The rent so received of the additional accommodation was also exclusively used for the aforesaid purpose Regular

accounts of the charges received from the travelers visitors etc., rent received from the tenants and expenditure incurred for the maintenance of the Dharmashala building as also for the payment of salary etc. to the staff were maintained and have been filed as Annexures B to F to this petition.

3. The Assessing Authority on 24-12-1968 served a notice under Sub-rule (6) of Rule 4 of the Rules framed under the Act and required the Petitioner, who is new in charge of the Dharmshala building to file a return by December 1968 in respect of the rent received during the financial years 1966-67, 1967-68 and 1968-69. In reply to this notice (Annexure) the Petitioner filed the return (Annexure). After the return was filed the Petitioner was called upon to pay tax as per notice (Annexure H). The Petitioner again objected to levy and demand of tax under the aforesaid Act but the Property Tax Officer (Respondent No. 1) rejected the objections and called upon the Petitioner to pay tax as demanded. An appeal by the Petitioner to the Assistant Property Tax Commissioner-Respondent No. 2 and a further revision application to the Additional Property Tax Commissioner-Respondent No. 3 were also not successful. Copies of the orders passed by the appellate and the revisional authorities have been filed as Annexures K and L to the petition.

4. In all these orders it has been held that under the provisions of Section 6(f) of the Act and Rule 33 of the Rules framed thereunder, the property in question was not exempt from tax under the Act; that it was not one of the institutions specified under Rule 33 of the Act read with Clause (ii) of the proviso to Section 6(f) of the Act and that on these grounds the levy of tax and demand thereof was quite in accordance with the provisions of the Act.

5. Feeling aggrieved with the aforesaid orders passed by the Taxing authorities under the Act, the Petitioner has filed this petition. It is contended that the provisions of Section 6(f) as they were in force during the relevant period of assessment by the Respondents did not authorise the levy of and demand for tax by the Respondents; that the building in question was exempt on the ground that it was for public charitable purpose and the rent received from the tenants of this building was applied exclusively for religious purpose.

6. In the return filed by the Respondents, it was contended that neither according to the provisions of proviso (ii) to Section 6(f) of the Act nor under Rule 33 of the rules framed under the Act, the Petitioner could claim exemption from payment of tax levied under the Act and that the levy of and demand for tax made by the Respondents was quite in accordance with the provisions of the Act and the rules framed thereunder. We have examined the respective contentions raised by both the parties and are of the view that in this case the impugned orders levying tax and making a demand therefor by the Respondents is not warranted either by the provisions of the Act or the Rules framed thereunder. Accordingly, in our opinion, the impugned orders are liable to be quashed.

7. The main question to be considered in this case is as to whether the Dharmashala in question is one of the categories of the properties mentioned in Section 6(f) and/or Rule 33 of the rules framed thereunder, which is exempt from payment of tax. The relevant provisions of Section 6 are as under:

6. Exemptions: The tax shall not be leviable in respect of the following properties, namely:

(a) \* \*

(b) \*\*

(c) \* \*

(d) \* \*

(e) \* \*

(f) buildings and lands or portions thereof used exclusively for public worship or public charity including mosques temples, churches, dharmashala, gurdwaras, hospitals, dispensaries, orphanages, alms houses, drinking water fountains, infirmaries for the treatment and care of animals and public burial or burning grounds or other places for the disposal of the dead:

Provided that the following buildings and lands or portions thereof shall not be deemed to be used exclusively for public worship or for public charity within the meaning of this section, namely:

(i) buildings in, or lands on which any trade or business is carried on unless the rent derived from such buildings or lands is applied exclusively to religious purposes or such public charitable institutions as may be prescribed;

(ii) buildings or lands in respect of which rent is derived, and such rent is not applied exclusively to religious purposes or to such public charitable institutions as may be prescribed.

(g) \* \*

(h) \* \*

According to the provisions of Clause (f) any building used exclusively for public worship or public charity including a Dharmashala is exempt from levy of tax under the Act. The Respondents, however, relied on the provisions contained in Sub-clause (ii) of the aforesaid proviso and have taken the view that since the Dharmashala in question is not such a public charitable institution as has been described under Rule 33 it is not exempt from levy and demand for tax under the Act. Rule 33 of the Rules is as under:

33. Public Charitable Institutions: (1) For the purposes of Clause (i) and of the proviso to Clause (f) of Section 6 the public charitable institutions shall be as follows:-

- (a) an orphanage;
- (b) a hospital or dispensary other than belonging to Government;
- (c) an alms house;
- (d) an institution for supplying free drinking water to the public;
- (e) an infirmary for the treatment of animals;
- (f) an institution for the purpose of burial or burning grounds or other places for the disposal of the dead;
- (g) an educational institution not belonging to the Government;
- (h) an institution established for widows;
- (i) Goshala:

Provided that all such public charitable institutions shall be certified by the Assistant Property Tax Commissioner of the area concerned:

Provided further that the regular accounts of income and expenditure of such institutions are maintained and are open to inspection by the Assistant Property Tax Commissioner or such other person as he may appoint in this behalf to satisfy himself that the rent derived from such land or building sought to be exempted is exclusively being spent for one or more of these institutions.

(2) A certificate under Sub-rule (i) shall be in Form XIX and shall unless cancelled, continue in force for the Assessment year for which it is issued but shall be renewable by the Assistant Property Tax Commissioner.

(3) If at any time the Assistant Property Tax Commissioner is satisfied that he has wrongly issued any certificate or that the institution concerned has ceased to be charitable Institution, it shall be open to him to cancel the certificate and inform the Assessing Authority.

If we read the provisions of Sub-clause (ii) of the proviso to Clause (f) of Section 6 of the Act, then it would be clear that it contemplates two categories of buildings, viz., (i) a building in respect of which rent is derived and such rent is not applied exclusively to religious purposes; and (2) to such buildings which are described as public charitable institutions under the Act. If the Dharmashala in question does not fall into the category of building the rent derived from which is not applied exclusively to religious purposes, then only it would not fall into the category of such properties which are exempted from the levy and payment of tax. If on the contrary, it is found that the Dharamashala is a building, the rent derived from it is applied exclusively to religious purposes, then certainly Dharamashala would not be liable for the levy and payment of tax under the Act. The Respondents have taken the view that Rule 33 applies to the facts of the present case and since it is not a public charitable institution prescribed by the Rules it would not be exempt from payment of tax. This view taken by the

Respondents, in our opinion, is based on a misconstruction of the provisions of Section 6 (f) of the Act.

8. Clause (f) of Section 6 of the Act as reproduced above clearly exempts a Dharamashala from payment of tax under the Act. This provision is, however, subject to the proviso to the section which says that the buildings specified in Sub-clauses (i) and (ii) of this proviso shall not be deemed to be a building used exclusively for public worship or public charity within the meaning of Clause (f) of Section 6 of the Act. In order to bring the Dharamashala in question in the category of buildings specified in Sub-clauses (i) and (ii) of the proviso, it was necessary for the Respondents to show that the rent derived from the Dharamashala in question is not applied exclusively to religious purposes. In the return filed by the Respondents it is nowhere stated that the charges collected from the travellers and the rent received from the tenants is applied to any purpose other than the maintenance of the building, payment of salary to the staff including Choukidar, sweeper etc. It is also not contended that the nominal charges recovered from the visitors and the rent received from the tenants is applied for any purpose which cannot be called a religious purpose. Construction of a Dharamashala and its maintenance is undoubtedly a religious purpose. It is meant for visitors to come and stay there. It is not a building from which rent is being realised by the person who dedicated it for earning any profit. The accounts filed as Annexures B to F show that the only nominal-virtually nil charges are realised from the visitors who come and stay in the Dharamashala and the only income derived from the rent is applied for the payment of salary to the Chaukidar and sweeper etc. No part of the income so derived is used for any purpose whatsoever, which is not connected with the maintenance of the Dharamashala, for undertaking the necessary repairs and for payment of salary to the staff. Under these circumstances, it is not possible to accept the view taken by the Respondents, according to whom since the institution in question was not covered by public charitable institutions specified for the purpose of Clause (i) of the proviso to Section 6(f) it could not be exempt from payment of tax. In our opinion, the Dharamashala in question is exempt from payment of tax both in accordance with the provisions of Section 6 (f) of the Act and Clause (ii) of the proviso to this section, the Dharamashala could have been liable for tax only if it has been established that the rent derived from it is not applied to religious purpose. As, in our opinion, it has not been either alleged or proved by the Respondents that rent derived from Dharamashala is not applied for religious purposes the provisions of Clause (f) of Section 6 of the Act are clearly applicable to the facts Of the case and on that ground the Dharamashala in question would be exempt from payment of tax under the Act.

9. It maybe stated that subsequently by Amendment Act No. 3 of 1971, Clause (f) of Section 6 was amended and was substituted by the following clause:

(f) buildings and lands or portions thereof used exclusively for public worship or public charity such as mosques, temples, clubs, Dharmashalas, gurudwaras,

hospitals, dispensaries, orphanages, aim-houses, drinking water fountains infarmaries for the treatment and care of animals and public burial or burning grounds or other places for the disposal of the dead:

Provided that the following buildings and lands of portions thereof shall not be deemed to be used exclusively for public charity within the meaning of this section namely,

(i) buildings in, or lands on which any trade or business is carried on unless the rent derived from such buildings or lands is applied exclusively to religious or such public charitable institutions aforesaid ;

(ii) buildings or lands in respect of which rent is derived and such rent is not applied exclusively to religious purposes or public charitable institutions aforesaid:

By this amendment the position was further made clear and it was precisely for this reason that subsequent to the coming into force of the amended provisions of Clause (f) of Section 6, there was no demand made for tax under the Act in respect of the disputed Dharamashala. This amendment, therefore, is indicative of the intention of the Legislature in exemption of such Dharamashala from payment of tax, which are maintained as public charities and the rent derived from it is applied for their maintenance.

10. Accordingly for the reasons given above, this petition deserves to be allowed. The impugned orders levying and demanding tax under the Act from the Petitioner in respect of Shri Gopal Krishna Dharamashala, Shajapur for the assessment years 1966-67, 1967-68, 1968-69 and 1969-70 (Annexures J, K and L) are hereby quashed. In the circumstances of the case, we direct both the parties to bear their own costs as incurred. Counsel's fee Rs. 100, if certified. The outstanding amount of security shall be refunded to the Petitioner.