(2007) 11 KL CK 0017

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27108 of 2006

Mother Superior APPELLANT

Vs

Government of Kerala and Another RESPONDENT

Date of Decision : 22-11-2007

Acts Referred:
Kerala Building Tax Act, 1975 — Section 3(1)

Citation : (2007) 11 KL CK 0017

Hon'ble Judges : K.P. Balachandran, J;K. Balakrishnan Nair, J

Bench : Division Bench

Advocate : S. Vijayan Nair, for the Appellant; Vinod Chandran, Spl. Govt. Pleader (Taxes) and P.A. Salim, Govt. Pleader, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The point that arises for decision in this Writ Petition is whether the building used for the residence of nuns in a convent is eligible for exemption from Building Tax in terms of Section 3(1)(b) of the Kerala Building Tax Act. The brief facts of the case are the following:

2. Adoration convent is a convent established by a religious congregation known as "The Sisters of Adoration of the Blessed Sacrament". The main purpose of the establishment of a convent is to provide residential accommodation to the nuns who may be undergoing eight years'' religious training to become a nun and for living thereafter while undertaking religious, charitable or educational activities. The above said congregation constructed a convent building at Thodupuzha. When the Tahsildar, the assessing authority, under the Kerala Building Tax Act, 1975 directed the convent to file the statutory return, it filed a return claiming exemption from the provisions of the Act u/s 3(1)(b) on the ground that the building was one principally used for religious purposes. The said provision reads as follows:

3. Exemptions.-(1) Nothing in this Act shall apply to-

(a) * * * * * * * *

(b) buildings used principally for religious, charitable or educational purposes or as factories or workshops.

3. The Tahsildar rejected the said claim and assessed the building to tax under the above said Act as per Ext.P-1 assessment order. The said order was challenged before this Court and this Court quashed the order and directed the Tahsildar to refer the matter for decision of the Government. The matter was heard by the Government on 11-2-2004. At the time of hearing, the Petitioner submitted Ext. P-2 statement detailing the grounds for granting exemption. Along with the said statement, Ext. P-2(a) order passed by the Government on 11-11-1991 granting exemption to a similarly placed building, was also produced. Ext. P-3 judgment rendered by a Single Bench of this Court on a similar matter was also submitted for the Government''s perusal. But the Government rejected the claim for exemption advanced by the Petitioner and issued Ext. P-4 order dt. 11-9-2006. While passing the order the Government placed reliance on the decision of a learned Single Judge of this Court in Chammanadu Devaswom v. State of Kerala 2002 (3) KLT 500. This Writ Petition is filed challenging Ext. P-4 order.

4. The Petitioner submitted that the nuns are persons engaged in religious and charitable activities. The convent is bound to provide residence for them as they cannot reside in their houses. So the provision for their accommodation should also be treated as a charitable-cum-religious activity undertaken by the convent. Learned Counsel for the Petitioner in support of his submission relied on the decision of this Court in Social S.G. of Assisi Sisters v. K.S.E.B. 1988 (1) KLT 727 wherein this Court considered what is a convent or a Monastery. The learned Counsel for the Petitioner also relied on an unreported decision of a learned Single Judge of this Court in W.P.C. 27250/06 dt. 22-6-2007, which fully supports the case of the Petitioner. The learned Counsel also submitted that there are several unreported decisions of this Court upholding the claim for exemption from the building tax for buildings used for residence of nuns.

5. The Respondents have filed a counter-affidavit supporting the impugned order and also the reasoning therein. The learned Special Government Pleader for taxes submitted that the building is admittedly used for providing accommodation to the nuns. Using a building for residential purposes cannot be treated as using the same for religious purposes. If it is used as a prayer hall or in some other manner connected with religious practice, it can be treated as a building used for religious purposes. In this case, it is used only for the residence of the nuns. Therefore, the claim was rightly rejected by the Government, it is submitted. The learned Government Pleader also relied on the judgment of a Division Bench of this Court in W.A. No. 2424/05 dt. 24-11-2005 wherein the claim for exemption of a building used for boarding and lodging of the students was declined though it was run by a convent. Learned Government Pleader also brought to our notice the decision of the Apex Court in Municipal Corporation of Delhi Vs. Children Book Trust, . It is a decision, in which it was considered

whether the running of school is a charitable activity qualifying the building for exemption from payment of tax under the Delhi Municipal Corporation Act.

6. The Government relied on the observation of the decision in Chammanadu Devaswom v. State of Kerala (cited supra) also to render Ext. P-4 impugned order. It is common case that the said observation relied on by the Government in the said judgment is only obiter dicta. The learned Single Judge was considering whether an "Oottupura" (Dining Hall) constructed by a Devaswom is eligible for exemption. While considering that, a passing observation was made that a place used for residence of religious persons like priests will not qualify for exemption from Building Tax. We also notice that the decision itself was reversed by a Division Bench of this Court and the matter was remanded to the Government for fresh consideration in accordance with law. There cannot be any doubt that convents are principally engaged in religious activities. The Division Bench of this Court in Social S.G. of Assisi Sisters v. K.S.E.B. (cited supra) at paragraph 20 observed as follows:

Convents are ''association of persons secluded from the world and devoted to a religious life'' and Monastery constitute the residence of monks living under religious vows. Spiritual fascination has brought these persons-men and women, under common roofs. Economic activity is thus not the dominant aspect of the institutional life in these establishments. Convents and Monasteries are thus outside the pale of commercial establishments.

7. In the said decision it was also observed as follows:

Bishop''s House to be characterised as a commercial establishment requires remarkable ingenuity. A Bishop is a clergyman of the highest order in Christian Churches, ranking next below the Archbishop and consecrated for the Spiritual Government of a Diocese. His functions are more spiritual than temporal. The Bishop is consecrated for the Spiritual Government of the Diocese and his house is his ecclesiastical establishment and for residence of himself and his followers and attendant priests. The predominant spiritual atmosphere and activity which should prevail in the Bishop''s house, overshadow the incidental economic activity required to maintain and support the institution. Bishop''s house is thus essentially non commercial.

8. If the activities that are going on in the convent are predominantly religious, then, normally, buildings of the convent used for the said purpose should also qualify for exemption. Of course, if any particular building is used for any commercial activity, such buildings could be segregated. It is not in dispute that a chapel is used for religious purposes. Attached to that, there may be a room for the Chaplain for taking rest etc. Can that room be segregated and said that it is not used for religious purposes. We feel that the answer should be in the negative. If the buildings of convents are generally used for religious purposes and one of the buildings is used for residence of inmates there, it shall also be treated as one, used for religious purposes. Any interpretation to the contrary

will be irrational. So, we are of the view that the buildings, used for the residence of the nuns in a convent, is principally used for religious purposes and therefore, should also qualify for exemption. We are in respectful agreement with the views expressed by C.N. Ramachandran Nair, J., in Writ Petition (C) No. 27250/06. The judgment in W.A. 2424/05 deals with the case of a boarding and lodging house for students run by a convent where rooms are let out collecting a fee. If the convent is running a commercial or industrial unit, the building housing that establishment will not qualify for exemption. That principle cannot be applied in the case of the building used for accommodating nuns in the convent. The decision of the Apex Court relied on by the learned Government Pleader also does not have any application to the facts of this case. The point considered therein was whether the building used for accommodating a school can be treated as a building used for charitable purposes or religious activities. The principle stated therein does not have any application to the facts of this case.

9. Finally, the learned Government Pleader prayed that the matter may be left to the decision of the Government as the Government rendered the decision relying on the obiter in the judgment of a learned Single Judge of this Court. We feel that having heard the matter at length, it is unnecessary for us to remit the question to the Government. It will engender another round of litigation. Accordingly, Ext. P-4 is quashed. It is declared that the building of the Petitioner concerned in this case is entitled for exemption from payment of building tax under the Kerala Building Tax Act, 1975.