
(1987) 03 KL CK 0009
In the High Court Of Kerala
Case No : O. P. No. 8840 of 1984

Mother Superior, Vincentgiri	Vs	APPELLANT
The Tahsildar, Mananthody		RESPONDENT

Date of Decision : 20-03-1987

Acts Referred:

Kerala Building Tax Act, 1975 — Section 3(2), 7

Citation : (1987) KLJ 642

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

Bench : Single Bench

Advocate : M. I. Joseph, for the Appellant; T.R. Ramachandran Nair Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T.L. Viswanatha Iyer, J.—Petitioner was assessed to tax under the Kerala Building Tax Act, 1975 (the Act, for brevity) in respect of a building constructed by a congregation, of which she is the Mother Superior. The notice of demand served on her is Ext. P2. After receipt of the order of assessment and the notice of demand, petitioner submitted a return along with a covering letter Ext. P1 stating that the building in question is one used principally for religious and charitable purposes and hence exempt u/s 3 (1)(b) of the Act. She prayed therefore that the "proceedings" may be dropped. This was met with a reply Ext. P2 from the assessing authority, namely the Tahsildar-respondent, that if the petitioner had any objection to the assessment, she may file an appeal to the appellate authority as provided in Section 11 of the Act. Petitioner challenges Exts. P2 and P3 on the ground that the building is one used principally for religious and charitable purposes and hence exempt u/s 3 (1) (b). She contends that the only authority vested with the jurisdiction to decide this question was Government u/s 3 (2), and hence the respondent should have referred the question to Government, for its decision. Respondent has filed a counter affidavit which gives in detail, a tale of laches on the part of the petitioner. The

respondent points out that the petitioner did not file any return after the construction of the building was completed, as required in Section 7 (1) of the Act. Therefore, the respondent issued a notice dated March 20, 1978 and served it on the petitioner on March 22, 1978 calling upon her to submit a return u/s 7 (3). Petitioner did not however comply with the notice and file any return. The respondent therefore, proceeded with the matter and issued a notice u/s 9 (4) dated February 29, 1980, to appear for a hearing on March 5, 1980. This notice was served on the petitioner on March 1, 1980. But the petitioner did not appear. The respondent thereafter made detailed enquiries and completed the assessment u/s 9 (5) to the best of his judgment, and served it on the petitioner on May 14, 1984. Even this did not move the petitioner. The demand notice u/s 10 of the Act, that is Ext. P3 was thereafter served on the petitioner on June 12, 1984. It was then that; the petitioner came up with the letter Ext. P1, enclosing a return.

2. Petitioner's main contention is that when she raised the question of exemption u/s 3 (1) (b) by the letter Ext. P1 it was incumbent on the respondent, assessing authority, to refer the question to Government u/s 3 (2) of the Act. Failure to do so, it is stated, vitiates the order of assessment, and the demand.

3. The scheme of the Act so far as it relates to assessment, and the appellate/ revisional remedies, is, in brief as follows. The owner of a building, the construction of which is completed after April 1, 1973 and the estimated capital value of which is more Rs. 75,000/- is bound to submit voluntarily a return in the prescribed form to the assessing authority. The assessing authority is also given the power to call upon any person to submit a return if he is of opinion that such person was liable to furnish a return.

The assessment is made by the assessing authority appointed u/s 4. The assessing authority may make the assessment, either accepting the return, or to the best of his judgment, as specified in Section 9. The question whether the building is exempt from the levy under the Act is however beyond the purview of the assessing authority, by virtue of the operation of Sub Section (2) of Section 3. Thereunder if any question arises as to whether a building is exempt under Sub Section (1) of Section 3 it shall be referred to the Government, and the Government shall decide this question after giving the interested parties an opportunity to present their case. The decision of Government is declared to be final and not liable to be called in question in any court of law, by sub clause (3) of Section 3.

4. When an assessment is completed by the assessing authority, the assessee has got two options, either to file an appeal u/s 11 after paying the building tax: or to move the District Collector in revision u/s 13 to call for and examine the record of the order of assessment and pass such order in reference thereto as he thinks fit. The decision in the appeal u/s 11 is subject to reference to the District Court on a question of law. Or the assessee may move the District Collector in

revision u/s 13 against the order of the appellate authority. The District Collector is also vested with the power to suo motu call for and examine the record of any order passed by the appellate authority or the assessing authority and pass suitable orders, Government is vested with the power to call for an examine the record of any order passed by the District Collector suo motu u/s 13.

5. So far as assessing authority is concerned, the only further powers vested in him after he makes the order of assessment are those under Sections 15 and 16. He can u/s 15, rectify any mistake apparent from the record-Section 16 confers on him the power to revise the order of assessment in cases where the annual value of the building fixed by the local authority is enhanced or reduced under the law governing that local authority, on the ground that the annual value originally fixed was excessive or low. Barring these limited powers conferred by Sections 15 and 16, the assessing authority becomes functus officio as soon as the order of assessment is passed, u/s 9 of the Act and the consequent notice of demand served.

6. The question of making a reference u/s 3 (2) will arise, so far as the assessing authority is concerned, only if the question arises before him. It means that the question should arise before him in the course of the proceeding for assessment under Sections 7 and 9. When once he becomes functus officio after the making of the assessment, any claim made before him thereafter, that the building in question is an exempted one and that no tax is recoverable is not a matter on which the assessing authority can, or should, make a reference u/s 3 (2). When once the assessment is completed, the only option available to the assessee is to file an appeal u/s 11 or to proceed by way of revision u/s 13. There is no remedy provided in the Act to raise the question of exemption again before the assessing authority, and then to have it referred. This is all the more so, because when once an assessment is made, it has got to be set aside by following the procedure prescribed by the Act, and a collateral attack on the same by resort to Section 3 (2) is not available. The assessment cannot be rendered a nullity or kept in suspense by reason of a claim for exemption made before the assessing authority after its completion. Even the Government's power is only to decide the question of exemption, and nothing further. The power of revision vested in them u/s 14 does not enable them to set aside any order or proceeding of the assessing authority.

7. I am therefore, of the opinion that an assessing authority is not bound to refer the question of exemption u/s 3(1) (b) to government, unless it is raised before him in the course of the proceedings under sections 7 and 9. An application like Ext. P1, after the assessment was completed, is misconceived and has no place in the scheme of the Act. The grievance voiced by the petitioner about Ext. P2 that in referring the petitioner to the appellate authority u/s 13, the assessing authority had acted illegally and failed to perform his duty of making a reference for the purpose of decision u/s 3 (2) is not sustainable in law.

8. There is an attack on Ext. P3 on merits. The question whether the building in

question is used principally for-religious and charitable purposes is one of fact. The respondent has filed counter disputing the claim made by the petitioner and stating that the building is being used to run a hospital of a commercial nature and that is is run with profit motive alone. Apart from it being a question of fact, I am also not inclined to entertain this question at this stage in view of the statutory silence maintained by the petitioner in response to the various notices issued by the respondent. This is a case of total non co-operation in the matter of assessment. I dismiss the Original Petition, without however any order as to costs.