
(2005) 03 AP CK 0089
In the Andhra Pradesh High Court
Case No : SA No. 273 of 1997

Pithapuram Municipality

APPELLANT

Vs

Christian Medical Centre

RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 88
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 31

Citation : (2005) 3 ALD 813

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : S. Nageswara Reddy, for the Appellant;

Judgement

P.S. Narayana, J.—Heard Sri S. Nageshwara Reddy, the learned Counsel representing the appellant. None represents for respondent.

2. Pithapuram Municipality represented by its Commissioner, aggrieved by the judgment and decree made in A.S.No. 12 of 1995 on the file of the Subordinate Judge, Pithapuram had preferred the present second appeal.

3. Respondent herein, Christian Medical Center represented by its Superintendent, Pithapuram, filed O.S. No. 59 of 1988 on the file of the District Munsif, Pithapuram, for declaration that the levy of tax of 989.01 ps to the house bearing Assessment No. 569, New Assessment No. 349, Door No. 1-3-22 by the defendant municipality as illegal and not binding on the plaintiff and also for consequential relief of permanent injunction restraining the defendant from collecting the tax and also for declaration that the enhancement of tax for the above building from 686.84ps under a special notice dated 29-9-1986 as illegal and capricious and for consequential relief of injunction not to collect the enhanced tax and also for declaration that the levy of tax of 326-24ps levied to the building Assessment No. 254, New Assessment No. 350, Door No. 1-3-22 A as illegal and void and for consequential relief of injunction not to collect the tax and likewise for declaration that the enhancement of tax for the above building

1-3-22 A from Rs.326-24ps to 543-05ps under a special notice dated 29-9-1986 as illegal, arbitrary and capricious and for a consequential relief of injunction and for costs.

4. The Court of the first instance on appreciation of the oral and documentary evidence, decreed the suit and aggrieved by the same, Pithapuram Municipality carried the matter by way of A.S. No. 12 of 1995 on the file of the Subordinate Judge, Pithapuram and the same was dismissed. Hence, the present second appeal.

5. The only substantial question of law which had been raised and argued in the present second appeal is as hereunder:

"Whether the nursing staff quarters within the premises of the charitable hospital is entitled to tax exemption u/s 88 of A.P. Municipalities Act, 1965?"

6. The respective pleadings of the parties are as hereunder;

"The plaintiff's institution was located in or about 1904 at Pithapuram and has been serving the public by establishment of hospital. In the same campus apart from the building utilized for consultation of patients, operation theatre and establishment rooms provided for working staff necessary and attached to the hospital, there are residential quarters provided for the staff, general wards and also specially provided a building popularly known as Hospital Choultry intended to provide free accommodations for the relatives and interested persons of the patients of the plaintiff. The defendant which is a statutory limb of the State Government though has got certain responsibilities to discharge like for providing educational institutions, is blind in not establishing any medical center in the Municipal limits of the defendant.

The defendant for reasons best known to itself has not established or is running any hospital, at least has to encourage any other institutions coming forward and giving medical aid and imparting education to the public with generous attitude. The plaintiff institution has constructed a building a community hall with the name of Nursing Class Room, Student Quarters with the name of Nursing Student Quarters and also a building with the name of school of nursing long back i.e., in 1920 in the same campus. The said Nursing Students Quarter is an old building constructed in or about 1972 in the same campus comprising of dining hall, common study room, relaxing hall and residents rooms purely intended for the trainee nurses whose education is given by the plaintiff. The plaintiff is not collecting any fees or rent from the trainee students whose education is given free by plaintiff and also for providing the said building for their accommodation etc.

So much so the building is being utilized as part of education purpose and also for providing of accommodation at free of rent. As against the said circumstances the defendant illegally levied property tax for the said building at Rs. 989.01ps. per six months and has been collecting illegally under Assessment No. 569 from

the plaintiff. Not satisfied with the said illegal collection of property tax from the plaintiff, the defendant issued a special notice dated 29-9-1996 enhancing the tax from Rs. 989.01 ps. to Rs. 1675.85ps. with false and untenable endorsement. The door number for the said building is given as 1-3-22 and Assessment No. 349. As a matter of fact the defendant has no right to levy any property tax to the said building, as it is exempted u/s 88 of A.P. Municipalities Act. The further enhancement to Rs. 1675-85ps is much more illegal, capricious, arbitrary and opposed to law in the face of exemptions provided under the A.P. Municipalities Act. Therefore, the plaintiff is entitled for a declaration that the levying of property tax of Rs. 989.01ps. itself is illegal, opposed to law, capricious and arbitrary as against the provisions of A.P. Municipalities Act on the footing that each demand and each collection is illegal and it is continuing illegally and there is no question of estoppel as against the statute and for a consequential permanent injunction restraining the defendant from collecting the property tax of Rs. 989-01ps and for further declaration that the enhancement as under special notice dated 29-9-1986 the property tax of Rs. 686-84ps is illegal, capricious, arbitrary, opposed to law and is not binding on the plaintiff and for consequential permanent injunction restraining the defendant from collecting the enhanced property tax of Rs. 686-84ps from plaintiff. As regard the building with the name of School of Nursing of the plaintiff constructed in the same campus prior to 1930 consisting of rooms, library, demonstration room, class room recreation room etc., is being utilized as part of education purpose for the trainee nurses. The plaintiff is not charging from the trainee nurses for whom said accommodation is provided for either as fees or rent for the said building, for such accommodations. As such the said building is being used as education purpose free of rent and property tax is exempted under each circumstances u/s 88 of A.P. Municipalities Act. While so the defendant illegally levying and began collecting tax of Rs. 326-24ps from the plaintiff to the said building under Assessment No. 254 as property tax per six months. Not satisfied with the said illegal collection of property tax from the plaintiff, the defendant issued a special notice dated 29-9-1986 enhancing the tax from Rs. 326-24ps to Rs. 543-05ps purporting to have levied on rental value of Rs. 3,885/-. The door number for the said building is given as 1-3-22 A and Assessment No. 350. No improvement is made to the said building. As a matter of fact the defendant has no right to levy any property tax to the said building, as it is exempted u/s 88 of A.P. Municipalities Act. The further enhancement to Rs. 543-05 ps is much more illegal, capricious, arbitrary and opposed to law in the face of exemptions provided under the A.P. Municipalities Act. Therefore, the plaintiff is entitled for a declaration that the levying of property tax of Rs. 326-24ps. itself is illegal, opposed to law, capricious, and arbitrary as against the provisions of A.P. Municipalities Act on the footing that each demand and each collecting is illegal and it is a continuing illegality and there is no question of estoppel against the statute and for a consequential permanent injunction restraining the defendant from collecting the property tax of Rs. 326-24ps and for further declaration that the enhancement as under Special Notice dated 29-9-1986 the property tax of

Rs. 216-81ps is illegal, capricious, arbitrary, opposed to law and is not binding on the plaintiff and for consequential permanent injunction restraining the defendant from collecting the enhanced property tax of Rs. 261-81ps from the plaintiff. Hence, the plaintiff filed the suit for declaration that the property tax of Rs. 989-01ps levied for the building Door No. 1-3-22 under Assessment No. 569 is illegal."

7. The matter was opposed by the Municipality stating that the enhancement of the tax had been questioned and in the light of the clear language employed in Section 88 of the Act aforesaid, the stand taken by the respondent herein-plaintiff cannot be sustained. On the strength of the pleadings before the Court of first instance, the following issues were settled.

i. Whether the plaintiff is entitled for declaration and injunction as prayed for ?

ii. To what relief ?

8. On behalf of the respondent-plaintiff, PW.1 was examined and Exs.A1 to A22 were marked. On behalf of the appellant-defendant Municipality, DW1 was examined and Exs.B1 to B10 were marked. The Court of first instance placing reliance on Section 88 of the Act aforesaid came to the conclusion that inasmuch as the institution is a medical center, the said institution is entitled for tax exemption. The appellate Court had confirmed the same. The appellate Court had extracted grounds of appeal at Para 8 and at Para 9 recorded "heard both sides" and commenced the discussion at Para 10 and ultimately dismissed the appeal at Para 11.

9. As can be seen from the judgment of the appellate Court, the points for consideration had not been framed at all.

10. The learned Standing Counsel for Municipality Sri S. Nageshwara Reddy had drawn the attention of this Court to Section 88 of A.P. Municipalities Act and also drawn the attention of this Court to the explanation which specifies that the exemption granted under this section shall not extend to residential quarters attached to schools, colleges, not being hostels or to residential quarters attached to hospitals, dispensaries and libraries and would maintain that in the light of the same, both the Courts had totally erred in decreeing the suit.

11. If at least in substance, the appellate Court had complied with the provisions of Order 41 Rule 31 CPC in the light of the discussion, this Court would have decided the matter on merits. But however, on careful scrutiny of the judgment of the appellate Court, this Court is satisfied that no points for consideration had been framed at all. Thus there is total non-compliance of Order 41 Rule 31 CPC. This Court is conscious of the fact that if there is substantial compliance and if all the aspects had been considered by the appellate Court, this Court may be slow in interfering in the light of the aforesaid provisions, but here is a case where no points for consideration had been framed at all. Apart from this aspect of the matter, the explanation to Section 88 which had been referred to supra had not

been appreciated in proper perspective. In the light of the same, it is a fit matter to be remanded to the appellate Court to frame the points for consideration in the light of the discussion referred to supra and decide the matter afresh. Inasmuch as, this is a matter concerned for recovery of money by a local body, it is needless to say that the appellate Court to decide the matter within a period of four months from the date of receipt of this order.

12. Accordingly, the second appeal is allowed to the extent indicated above. No order as to costs.