(2014) 11 KL CK 0112

In the High Court Of Kerala

Case No : WP (C). No. 2159 of 2010 (T)

Prestige Educational Trust (Registered) APPELLANT

Vs

The Tahsildar RESPONDENT

Date of Decision : 18-11-2014

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

Citation : (2014) 11 KL CK 0112

Hon'ble Judges : V. Chitambaresh, J;A.K. Jayasankaran Nambiar, J

Bench : Division Bench

Advocate : A. Mohamed Mustaque and T. Praveen, Advocate for the Appellant; Shaij Raj, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is a charitable Trust that owns buildings. In the writ petition, it challenges Ext. P9 order of the Government which considered the claim of the petitioner for exemption from the provisions of the Kerala Building Tax Act in respect of a building that was put up by the petitioner and which housed a Medical College, Dental College, Nursing College etc. By the said order, the Government granted exemption to an extent of 16,809.08 sq. metres, out of a total area of 30176.37 sq. metres which the building covered. Thus, the exemption was denied only to that portion of the building which housed the hospital that was run by the petitioner. Pursuant to Ext. P9 order of the Government, Ext. P10 revised assessment order was passed by the 1st respondent. Exts. P9 and P10 are impugned in the writ petition, inter alia, on the ground that the petitioner Trust being a charitable Trust, was entitled to the benefit of exemption under the Kerala Building Tax Act even in respect of the area that was covered by the hospital.

2. A counter affidavit has been filed by the 1st respondent wherein the sequence of events leading to the passing of Ext. P9 order have been narrated and it is pointed out that only an extent of 14766.56 sq. metres of the building was taken for the purposes of levy of building tax and the remaining portion of the building

was exempted by Ext. P9 order after taking into account the charitable activities carried on by the petitioners Trust. It is also pointed out that the petitioner has since remitted amounts of Rs. 2,71,633/- and Rs. 5 lakhs on various dates and the balance amounts due from the petitioner have to be remitted forthwith. Counsel for the petitioner would clarify that as against the said figures mentioned in the counter affidavit of the 1st respondent, the balance amount payable as on today to the respondents, by way of building tax on the said building, is only an amount of Rs. 2,43,267/-. He relies on the letter dated 23.09.2014 issued by the Village Officer, Ancharakandy for this purpose.

3. I have heard Sri. K.R. Avinash, the learned counsel for the petitioner and Smt. K.T. Lilly, the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I note that the area in respect of which the petitioner has not been granted exemption, under Ext. P9 order of the Government, is the area that is covered by the hospital run by the petitioner. There is a clear finding in Ext. P9 order of the Government that those areas that were found to be used principally for education purposes, were entitled to exemption. It follows, therefore, that the area covered by the hospital run by the petitioner has been found not to satisfy the requirements of Section 3(b) of the Kerala Building Tax Act for the purpose of exemption. It is admitted by the petitioner that it collects fees from the patients who visit the hospital for treatment. The only contention that is raised at the time of hearing is that the hospital itself forms part of the Medical College and insofar as the Medical College is engaged in education, the hospital must also be seen as forming part of the educational institution. Attractive though the contention may appear at first blush, I am afraid, I cannot accept the same. A hospital has to be considered separate, from the educational institution, for the purposes of the levy of tax under the Kerala Building Tax Act. The requirement of having a hospital attached to the Medical College is one that is stipulated by the regulations issued by the Medical Council of India. On account of the said stipulations, it does not follow that the hospital is also an educational institution for the purposes of grant of exemption under the Building Tax Act. The hospital has an existence of its own in that it caters to the requirements of the public, and the fact that it is also visited by students as part of their academic curriculum, cannot detract from this fact. In the instant case, persons are treated in the hospital, against payment of charges collected by the petitioner for rendering medical services. In that view of the matter, I feel that the case of the petitioner in respect of the area occupied by the hospital would be squarely covered by the decisions of this Court in Jubilee Mission Medical College and Research Institute Vs. Government of Kerala, as also decision of the Supreme Court in Sh Medical Centre Hospital Vs. State of Kerala and Others, , where it was held that a hospital attached to a Medical College cannot be treated as a building used for educational purposes and further, that exemption can be

granted to a hospital building only when medical relief is granted free of cost. Thus in the light of the aforementioned decisions, I do not find any merit in the contentions in the writ petition as regards the grant of exemption to even those areas of the building that are covered by the hospital. Resultantly, the writ petition fails and is accordingly dismissed. The petitioner shall effect payment of the balance amount of tax due to the respondents within a period of two months from the date of receipt of a copy of the judgment.