(2009) 08 KL CK 0096

In the High Court Of Kerala

Case No : O.P. No. 14597 of 2002

Ranny-Perinad Grama Panchayat APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 04-08-2009

Acts Referred:
Kerala Panchayat Raj Act, 1994 — Section 207(1), 207(2), 219

Citation : (2009) 4 KLT 411

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Siby Mathew, Philip J. Vettickattu, B. Premnath, Annie Paul and E. Narayanan, for the Appellant; U.K. Ramakrishnan E.K. Madhavan, P.V. Lohithakshan, P. Vijayamma, Uma Gopinath, V. Krishna Menon and Mathew Vadakkel, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—Petitioner-Panchayath is challenging Ext.Pl order issued by the Government holding that the buildings owned by respondents 3 and 4 in and around Sabarimala Temple and at Pamba are entitled to exemption from building tax. I have Heard Counsel appearing for the petitioner and standing Counsel appearing for the Travancore Devas worn Board.

2. It is seen from the findings recorded by me Government in Ext.pl that festival in the temple is for two months in a year and most of the remaining ten months in a year, the buildings owned by the Devaswom Board remain closed. The temple is located deep inside the forest and the buildings involved are partly around the temple in the forest and balance on the banks of river Pamba forming foot hills of the very same western ghats. The entire area is dense forest and clearance is made only for providing facilities to the pilgrims. In fact, Devaswom maintains the buildings for various purposes only to cater to the needs of pilgrims. The Panchayath also has no case that the buildings have any use except during festival season, that is two months in a year. Section 207(1)(a) of the Kerala Panchayat Raj Act, 1994 provides for exemption from the tax, cess or

duty leviable on places set apart for public worship and is either actually so used or used for no other purposes. Besides this, Section 207(2) gives power to the Government to grant exemption from payment of any tax, cess or duty to any person or class of persons. The buildings are used by the Devaswom for various purposes in connection with temple festival and ceremony. Prima facie the buildings owned by the Devaswom therefore qualify for exemption u/s 207(1)(a) of the Act. Counsel for the Panchayath submitted that buildings which are essentially used for public worship, namely, buildings housing the temple are exempted. The contention of the Devaswom is that other buildings constructed by it for the purpose of administration of the temple will also qualify for exemption u/s 207(1)(a) of the Act. The case of the Panchayat is that even Guest Houses and Lodges are maintained by the Devaswom on chargeable basis, which do not qualify for exemption. Counsel further submitted that even petrol bunk facility is provided by the Devaswom and exemption covers even such a building. Even though the contention in this regard is tenable, because the buildings let out to the pilgrims on chargeable basis will not be covered by the exemption u/s 207(1)(a) of the Act and the position is not different for buildings used for commercial purposes, though in the premises of the temple, I feel the order of the Government is still sustainable because Section 207(2) authorises the Government to grant exemption to any person or class of persons. In this case, the Government has considered exemption for the Travancore Devaswom Board which owns and controls temple and reason for granting exemption is that buildings are constructed, maintained and used only to cater to the needs of the temple in connection with festival. I am of the view that the powers of the Government are quite wide and exemption is a policy matter with which this Court should not interfere. Further it is to be noted that but for the existence of the temple, there was no necessity for the Devaswom to construct, and maintain any building at very high cost in the forest area. Counsel for the Panchayath submitted that Section 219 of the Act authorises the Panchayath to collect contribution from mosque, temple, church, etc. for carrying on festival within it''s area of jurisdiction. However, I find from Section 219 that the purpose is to fund the Panchayath to cater to the needs of the people participating in the festival or ceremony and the contribution is essentially to meet expenditure for the Panchayath for sanitation work, for making arrangement for maintenance of safety, health, etc. In fact what is visualised u/s 219 is an arrangement between the holder of the ceremony and the Panchayath so that Panchayat gets paid for the services rendered. Petitioner-Panchayath has stated about rendering of various services by them during Sabarimala Festival season. It is the duty of the "Devaswom and State Government and the local authorities to take care of public sanitation, and welfare of the pilgrims visiting the temple. If the Panchayath renders services specifically to cater to the needs of the pilgrims, it is certainly entitled to contribution from Devaswom. However, Counsel for the Devaswom submitted that Devaswom meets the expenditure for public sanitation, security and other purposes in co-ordination with the Government. Eventhough Counsel for the petitioner pointed out that exemption is not provided for advertisement tax, collection of parking fee, etc., I do not think petitioner is entitled to any relief because Government has granted blanket exemption from payment of any tax, cess or duty by the Devaswom in respect of facilities'' provided by it to the pilgrims. Further since the land is entirely forest land, Panchayat has no right to demand any parking fee or charges for use of the forest land by the pilgrims. I feel, sufficiently before every season starts, Panchayath can approach the Board offering whatever services in public sanitation and welfare of the pilgrims that can be done by them for the Devaswom to evaluate it, reduce it''s cost, and pay the Panchayath the contribution in terms of Section 219 of the Act. Considering the importance of the matter, I feel the Government should co-ordinate in the matter so that every agency does it''s job and gets paid for the same.

O.P. is disposed of as above.

