

(1964) 09 KL CK 0031

In the High Court Of Kerala

Case No : O.P. No's. 2429 and 2431 of 1963

Rev. Mother General

APPELLANT

Vs

Philip and Others

RESPONDENT

Date of Decision : 23-09-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : (1965) KLJ 144

Hon'ble Judges : P. T. Raman Nayar, J;P. Govindan Nair, J

Bench : Division Bench

Advocate : K.P. Abraham, George Kurien, K.P. Pathrose, E.M. Jacob, K.K. Poulose, M. Pathrose Mathai and George Tharakan, for the Appellant; M. Kumaran, K.A. Rajan, Smt. Sarala, V. Sankara Menon, V.P. Joseph and K.K.K. Kurup, for the Respondent

Final Decision : Allowed

Judgement

Raman Nayar, J.—The question is whether the religious order known as the Third Order Apostolic of Our Lady of Mount Carmel and Saint Teresa having its head quarters at Ernakulam (for short, the Order) is entitled to the benefit of sub-section (7) of section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1959 (the Act) which runs thus:

Where the landlord of a building is a religious, charitable, educational or other public institution, it may, if the building is needed for the purposes of the institution, apply to the Rent Control Court, for an order directing the tenant to put the institution in possession of the building.

The Rent Control held that it was, and allowed the applications brought by its Assistant Mother General on its behalf for the eviction of two of its tenants. The appellate authority, and the District Court in revision, however, took the contrary view and dismissed the applications. Hence these petitions by the Order (represented by its Assistant Mother General) under Arts. 226 and 227 of the Constitution for quashing the orders of the appellate authority and the District

Court.

The punctuation adopted by the sub-section (or rather the want of it) admits of its being read in two ways. The first-and, we think, the correct way- as if there were a comma after the word, "educational" and also after the word, "other" so that the adjectives, "religious", "charitable", "educational" and, "other" would qualify the term, "public institution" and the relevant clause of the sub-section would read, "religious public institution, charitable public institution, educational public institution, or other public institution". The second, as if there were a comma after the word, "educational" and after the word, "public", so that the adjectives "religious", "charitable", "educational", and, "other public" would qualify the word, "institution" and the clause would read, "religious institution, charitable institution, educational institution, or other public institution" as if on the assumption that all religious, charitable and educational institutions were public institutions. On the first construction it would be necessary for the Order to show that it is a public institution; on the second, it need only show that it is a religious institution, and, that not being disputed, there would be an end of the matter.

2. The word, "institution" is wide enough to cover an organisation which is in no sense public-

a society or organisation established for some object, especially cultural, charitable or beneficent

is how Chambers's, Twentieth Century Dictionary defines the word-and it is not difficult to conceive of institutions that are purely private in that they are concerned only with a family or other groups of persons too narrow to constitute the public or a section of the public. Having regard to the purpose of the Act we can think of no reason why a purely private institution (even if it be a religious, charitable or educational institution) should be placed in a more favoured position than a private person, and, if the intention was that all religious, charitable and educational institutions should be regarded as public institutions whether, in fact, they are so or not, the proper and usual way of ensuring this would be to so define, "public institution" as to include all institutions that are religious, charitable or educational. As we have already said, we think that an institution must be a public institution to get the benefit of the sub-section and in our view the words, "religious", "charitable" and "educational" are used in the sub-section only illustratively in order to show" that public institutions the Legislature had in mind in enacting the sub-section. The use of those words might be some indication that such institutions are generally speaking public institutions, but we do not think that it is conclusive of the matter.

3. Whether the Order is entitled to the benefit of the sub-section depends on whether it is a public institution in the sense in which that expression is used in the sub-section. Now the expression, "public institution" (like the two words that go to make it) is of wide import and is susceptible of different meanings

according to the context in which it is used. It is by no means easy to give a definition that will cover every use of the expression and its meaning must always depend upon the context in which it is found. In a particular context it may mean an institution "which is created and exists by law or public authority" as was held in *Black Stone Engineering Works v Ananthakrishna Iyer* (I.L.R. 1956 T-C. 13) accepting the definition in Ballentine's Law Dictionary, Second Edition, page 1046. And, in the context there considered, namely, the context of clause 3 (4) of the Travancore-Cochin Buildings (Lease and Rent Control) Order, 1950, virtually a provision for requisitioning, corresponding to Section 4 (3) of the Act, that is perhaps the right meaning to be ascribed to the expression. On the other hand, in the context of the section 1 of the Factory and Workshop Act, 1907 it was held in *Royal Masonic Institution For Boys (Trustees) v Parkes* (1912 3 K. B. 212) that a school established and chiefly maintained by Freemasons for the benefit entirely of those who belong to their own body receiving support to a very small extent from the general public in the shape of subscriptions, and receiving also a grant from public funds, was a public institution. And, in *Hall v Derby Sanitary Authority* (16 Q.B.D. 163) the test laid down with reference to the similar expression "public charity" was that if a thing is not private then it is public; and, of this Order which admittedly runs a number of educational and charitable institutions for the benefit of the general public, it could scarcely be said that it is something private. We think that, having regard to the object of the statute, the meaning to be ascribed to the expression, "public institution" in the sub-section in question is

an organisation which is substantially one devoted to the promotion of the general welfare.

It is not necessary, as was held by the District Court following the decision in *The Black Stone Engineering Works v Ananthakrishna Iyer* (I. L. R. 1956 TC 13) that it should be an institution established by law or public authority-in fact a religious institution so established would scarcely fit in with the concept of a secular State envisaged by our Constitution-or, again, that membership of the institution should be open to the public, any more than that the trusteeship should be open to the public in order to make a trust a public trust. It has been suggested that there must be a trust for the benefit of the public. That would, we think, obtain in most cases. But that, in our view, is not essential, although it would put the matter beyond doubt, for, the trust would be an institution-the insistence on an institution is obviously to ensure, at least in some measure, the continuity of the public benefit which might not be forthcoming in the case of an individual-and the element of public benefit would ex hypothesis be there. Nor do we think it essential that the institution should derive support from public funds although that might tend to show that it functions for the public good.

4. One of the meanings given to the word, "public" in the Shorter Oxford Dictionary is, "devoted or directed to the promotion of the general welfare" That is the sense in which the word is used in phrases such as, "public charity" and,

"public trust"; and that, we think, is the sense in which it is used in the phrase, "public institution" occurring in the sub-section.

5. The word, "institution" by itself is capable of importing the element of public benefit, for, although it is wide enough to cover an organization which is in no sense public, in other words, a purely private institution, it is specially used to mean an institution for the public benefit. "Organization for promotion of some public object", is how the Concise Oxford Dictionary defines the word; and the definition given in the Shorter Oxford Dictionary is,

an establishment, organisation or association instituted for the promotion of some object, especially one of public utility, religious, charitable, educational, etc.

This latter definition describing the sense in which the word is specially used is very close to the language of the sub-section, "religious, charitable, educational or other public institution", and the expression, "public institution" there (i.e. in the sub-section) means an institution of that description. The word "public" is not mere surplusage. It is used for the purpose of excluding institutions that are purely private and for emphasising that the sub-section applies only to institutions that function for the public benefit.

6. The object of the Act, as its preamble shows, is "to regulate the letting of buildings and to control the rents of such buildings and to prevent unreasonable eviction of tenants therefrom". This is obviously in the public interest, and the several provisions of the Act attempt to strike a nice balance between the public interest and private rights. Sub-section (3) of section 4 enables the requisitioning of a building that has fallen vacant when the building is required for "the purposes of a State or Central Government or of any local authority or of any public institution". This is a serious inroad into private rights, and in the context of this sub-section, and especially having regard to its juxtaposition with the phrases,

"State or Central Government" and "local authority", the phrase, "public institution" probably has, as we have already remarked, the meaning ascribed to it in *Black Stone Engineering Works v Ananthakrishna Iyer* (I. L. R. 1956 T.C. 13). Section 11 greatly restricts the landlord's right to eviction, and, in large measure, confirms fixity on the tenant. But, by the first proviso to sub-section (1) of that section, the State Government, the Central Government and other public authorities notified under the Act are exempt from its operation and are thus relieved from its shades. They are left free to obtain eviction in the ordinary course. A lesser measure of relief is afforded by sub-section (7) to religious, charitable, educational and other public institutions by enabling them to obtain eviction under the provisions of the Act if the building is needed for the purposes of the institution, and surely, the classes of institutions for whose benefit sub-section (7) is intended must be different from the classes of institutions for whose benefit the first proviso to sub-section (1) is intended. It is difficult to conceive of a public institution in the sense in which that phrase was understood

in *Blackstone Engineering Works v Ananthakrishna Iyer* (I.L.R. 1956 T.C. 13) which would not come within the proviso to sub-section (1), and we think that sub-section (7) was enacted for a different kind of public institutions, namely, for institutions that serve the public good. The policy underlying the statute is that such institutions must be protected and encouraged in the public interest, and, while sub-section 11(11) of the section saves recognised educational institutions (recognised, and therefore assumed to be functioning for the public benefit) from eviction under the provisions of sub-sections (1) to (10), sub-section (7) on the other hand enables religious, charitable, educational and other institutions functioning for the benefits of the public, to obtain eviction.

7. It is the same policy of protecting and encouraging institutions functioning for the public good that informs statutes for the proper administration of such institutions and statutes exempting such institutions from taxation. And it is in pursuance of the same policy that the English Law, building upon the statute of Elizabeth (43 Eliz. c. 4), evolved the doctrine that public benefit was an essential element of legal charity, and, although that statute "was directed not so much to the definition of charity as to the correction of abuses which had grown up in the administration of certain trusts of a charitable nature," applied the doctrine derived therefrom and looked primarily to that statute for guidance in deciding the issue whether or not an object was charitable in such widely different fields as the law of mortmain, the law of perpetuity, the revenue law, and even in the case of private bequests. Our charitable endowments act (VI of 1890) defines, "charitable purpose" as including relief to the poor, education, medical relief and the advancement of any other object of general public utility, but not including a purpose which relates exclusively to religious teaching or worship. And, for purposes of relief from tax, the income tax Act, 1961 (like its predecessor Act) defines, "charitable purpose" as including relief, to the poor, education, medical relief, and the advancement of any other object of general public utility. It is in this sense then, namely, that of an institution of the advancement of any object of general public utility that the sub-section we are construing whose language is similar to that of the definitions just referred to, uses the expression, "public institution."

8. Within the technical meaning of the English law nothing is a charity unless there is present an element of public benefit, or, as we would put it, unless it is a public charity. (See the heading of Section 92 of the civil procedure code). In *Allen, In re Hargrewes v Taylor* ((1905) 2 Ch. 400) as also in *Wrexham Corporation v Pamplin* (1873) 21 W. R. 768, it was held that a bequest for the institutions of a specified locality, without more, meant one for the public institutions of the locality, and so was a good charity. (See *Stroud's Judicial Dictionary*, 3rd edition, page 1471). In other words, those decisions called institutions functioning for the public benefit, public institutions; and that is precisely what the sub-section we are now construing does. Instead of using the word, "institution" which might include private institutions it uses the expression, "public institution."

9. The decision of the House of lords in *Gilmour v Coats* (1949) A. C. 426, has been cited on behalf of the respondent-tenants apparently because in that case it was held that the purposes of a Carmelite Priory belonging to "the order of our Blessed Lady of Mount Carmel," drawn like the order from the Primitive Carmelite Order and inspired by St. Teresa, were no charitable purposes. But that was only because that order was a purely contemplative order not given to exterior works of public benefit such as teaching, nursing the sick and tending the poor. The public benefit claimed, namely, the benefit of intercessory prayer and edification by example, it was held, was not susceptible of legal proof and was too vague and intangible to be upheld. And it is clear from the decision that an active order like the present order engaging itself in exterior works for the public good would have been regarded as satisfying the test of public benefit.

10. The District Court was quite right in observing that to get the benefit of the section, the landlord must himself be a religious, charitable, educational or other public institution. It is not enough if he runs a religious, charitable, educational or other public institution and needs the building for the purposes of that institution. But, it seems to us beyond doubt that the order, which is the landlord in these cases, is itself a public institution in the sense in which we have construed that expression. Clause 2 of the constitutions of the order says:

The end of the Third order is two fold, first, the glorification of God and self sanctification, by means of meditation and mortification of the senses, and the observance of the three vows according to the constitutions; secondly, to work for the salvation of souls, the education of children and other works of mercy, i.e. care of orphans, the destitute, the aged and to work in the missions.

It is not disputed that the second object, namely the education of children and other works of mercy, i.e., care of orphans, the destitute and the "aged has been translated into practice and that the order runs educational and other institutions open to the general public. These institutions are recognised by the Government and by the university and receive aid from public funds. And, although it would appear that, once the landlord is a public institution, the purpose for which the institution needs the building need not be a public purpose, we might add that the order requires the buildings now in question (the word "building" by definition includes the land appurtenant thereto) for the purposes of certain educational institutions which it is running and that these institutions are open to the general public.

11. In the result we allow these petitions. The orders of the appellate authority and the District Court are quashed. The result is that the orders of the Rent Control Court stand. We make no order as to costs.