(1984) 12 KL CK 0018

In the High Court Of Kerala

Case No : O.P. No. 210 of 1984

Rev. Sr. Baptist Benedication	APPELLANT
Vs	
State of Kerala and another	RESPONDENT

Date of Decision : 12-12-1984

Acts Referred:
Kerala Panchayat Raj Act, 1994 — Section 66, 72

Citation : (1985) KLJ 284

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : S. Vijayan Nair, for the Appellant; K.S. Menon Government Pleader, for the Respondent

Judgement

K.P. Radhakrishna Menon J.

1. The only question, the learned counsel for the petitioner, pressed before me is that Ext.P1 demand is liable to be quashed for the reason that the same represents the tax levied on buildings which are exempt from tax u/s 72 of the Kerala Panchayats Act, for short, the Act. According to him, the buildings are attached to a place of public worship and are used for residential purposes connected therewith. He has a further case that a portion of one of the buildings is used for educational purposes and hence that portion of the building is entitled for exemption under 1 Section 72(d) of the Act. The learned counsel also submitted that the authority concerned did not even issue a pre-assessment notice before it levied the tax demanded under Ext.P1. In short, the levy is not sustainable because it is made in violation of the principles of natural justice. The learned counsel for the Panchayat submitted that the Panchayat had issued a public notice as contemplated under the Act before the tax was levied and therefore the above submission of the petitioner that the impugned levy is void for the reason that it is made in breach of the principles of natural justice, is devoid of merit. In short, according to him, the levy cannot be said to be made in violation of the principles of natural justice.

2. The respondents, however, have no case that individual notice had been given to the petitioner. The buildings enumerated u/s 72 of the Act are exempt from tax leviable u/s 66, The scheme of Section 66 read with Section 72 is such that the authority competent to levy building tax is bound to decide the issue whether or not the building sought to be assessed, is includible in any one of the exempted categories u/s 72, before he decides to levy the tax. It is all the more so, if such a dispute in fact, exists. In short, an enquiry in the above line should be made before the tax was levied. An enquiry of this nature can be had only after notice to the affected party. If that be the position, the levy in the case on hand is bad in law because it was made without notice to the petitioner. It therefore was made in breach of the principles of natural justice. Ext.P1, demanding the tax thus levied, therefore, is liable to be quashed. I quash Ext. P1. The Executive Officer of the Panchayat is directed to conduct an enquiry and decide the question whether or not the buildings in question are used for the purposes mentioned in Section 72(b) and (d) before the tax is levied. The Executive Officer shall give an opportunity of being heard to the petitioner before the final order is passed. The petitioner is free to file her objections, if any, against the proposed levy of tax on the buildings.

The Original Petition is disposed of as above. No order as to costs.

