(2014) 10 KL CK 0034

In the High Court Of Kerala

Case No : WP(C). No. 31947 of 2007 (C)

S.A.B.S. Provincial House APPELLANT

Vs

The State of Kerala RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:
Kerala Building Tax Act, 1975 — Section 3, 3(1)(b)

Citation : (2014) 10 KL CK 0034

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

Bench : Single Bench

Advocate : P. Narayanan, Advocate for the Appellant; Liju V. Stephen, Sr. Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is aggrieved by Ext. P3 order passed by the 1st respondent in connection with a request for exemption from payment of building tax on a building owned by the petitioner. It is the case of the petitioner that it already had a building having a plinth area of 1616.44 sq. metres and it was used for residence of nuns belonging to the congregation. The said building was granted exemption from building tax. Thereafter, a new building having a plinth area of 816.38 sq. metres was also constructed for the purposes of use as a convent and for housing the nuns of the said convent. When the petitioner prayed for an exemption for the said new building in accordance with Section 3 of the Kerala Building Tax Act, the 1st respondent vide Ext. P3 order found that while the old building having a plinth area of 1616.44 sq. metres and used for residence of nuns is eligible for exemption from building tax, the new building portion having plinth area of 816.38 sq. metres is not eligible for exemption from building tax. The petitioner submits that the stand of the 1st respondent in Ext. P3 order is mutually contradictory insofar as both the buildings serve the same purpose, of accommodating the nuns, and yet exemption is granted in respect of one building but not to the other.

2. A counter affidavit has been filed on behalf of the 2nd respondent wherein it is

stated that the new portion of the building having a plinth area of 816.38 sq. metres was inspected by the Tahsildar on 02.08.2004 and that the new building which was constructed as an extension to the old portion consists of more than 20 rooms, dinning hall and library and was suitable for use as a hostel. It is stated that at the time of inspection, no charitable activities were seen carried on in the said building.

3. I have heard Sri. P. Narayanan, the learned counsel appearing on behalf of the petitioner as also the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I am of the view that Ext. P3 order passed by the 1st respondent must necessarily be quashed. The claim for exemption from building tax was made by the petitioner in terms of Section 3 of the Kerala Building Tax Act, 1975. As per the said Section, the provisions of the Act will not apply, inter alia, to buildings used principally for religious, charitable or educational purposes or as factories or workshops. By way of an explanation, it has been clarified that charitable purpose includes relief of the poor and free medical relief. It is also made clear that if any question arises as to whether a building falls under Sub Section (1) of Section 3, it shall be referred to the Government and the Government shall decide the question after giving the interested parties an opportunity to present their case. It was in accordance with that provision that the case of the petitioner was referred to the 1st respondent for a decision with regard to grant of exemption. In this connection, it would be relevant to notice the decision of a Division Bench of this Court in Mother Superior Vs. Government of Kerala and Another which holds that building used for residence of nuns in a convent is principally used for religious purposes and would therefore qualify for exemption. In Ext. P3 order of the 1st respondent, the 1st respondent has treated the old building having a plinth area of 1616.44 sq. metres that was used for the residence of nuns, as eligible for exemption. Adopting the same yardstick, therefore, and going by the ratio of the decision of the Division Bench referred to above, there was no justification in not granting the exemption even in respect of the portion of the building that was constructed anew and having a plinth area of 816.38 sq. metres, since it is not in dispute that the said portion also was used for the residence of nuns. The 1st respondent cannot take virtually contradictory stands when considering the claims for exemption in respect of buildings where the principal use is the same. In this view of the matter, I quash Ext. P3 order of the 1st respondent to the extent it denies exemption from building tax to the new building portion having a plinth area of 816.38 sq. metres. Assessments of the petitioner to building tax shall, when done by the 2nd respondent, proceed on the basis that both the old portion of the building having plinth area of 1616.44 sq. metres and the new portion having a plinth area of 816.38 sq. metres are eligible for exemption from building tax under Section 3(1)(b) of the Kerala Building Tax Act, 1975.

The writ petition is allowed as above.

