

(1999) 08 KL CK 0015
In the High Court Of Kerala
Case No : W.A. No. 429 of 1996

Secretary, Aikaranad Grama Panchayat

APPELLANT

Vs

Malankara Orthodox Syrian Church

RESPONDENT

Date of Decision : 19-08-1999

Acts Referred:

Kerala Panchayat Act, 1960 — Section 5(1), 66, 66(2), 71, 72(1)

Citation : (1999) 08 KL CK 0015

Hon'ble Judges : T.M. Hassan Pillai, J;K. Narayana Kurup, J

Bench : Division Bench

Advocate : P.G. Parameswara Panuker, P. Gopal and N. Manojkumar, for the Appellant; M.P. Abraham, for the Respondent

Final Decision : Allowed

Judgement

K. Narayana Kurup, J.—The Respondent/Panchayat in the Writ Petition is the Appellant. The appeal is directed against the judgment of the learned Single Judge declaring that the building in question owned by the Respondent in which the State Bank of Travancore has its branch is not liable to be taxed by the Appellant/Panchayat by virtue of the exemption contained in Section 72(1)(f) Exemption.- (1) The following buildings and lands shall be exempt from the tax, cess or duty leviable u/s 66(f) charitable hospitals and dispensaries; of the Kerala Panchayats Act, 1960 (for short "the Act"). The brief facts necessary for the disposal of the appeal are as follows: The Respondent herein, viz. Malankara Orthodox Syrian Church Medical Mission Hospital, Kolencherry, is a society registered under the Travancore Cochin Literary Scientific and Charitable Societies Act (Act XII/1955). They are running a hospital at Kolencherry near Ernakulam. According to the Respondent, their main object is to establish, equip and maintain medical institutions such as hospitals, health centres, dispensaries and nursing homes for the benefit of the public and to provide facilities for treatment, nursing care and attention to patients through latest scientific methods. The Respondent constructed a new building No. III/459 (No. III/389 K)

in the hospital compound to be given on rent for commercial purposes. The building was in fact let out to the State Bank of Travancore on a monthly rent of Rs. 9,775. On completion of the construction of the building the Appellant/Panchayat served on the Respondent a bill dated 9th January 1986 Assessing the annual tax of Rs. 6,334.20 on the building and requesting the Respondent to pay a sum of Rs. 4,223.05 within 15 days which was under challenge in O.P. No. 1467 of 1986 before this Court. The aforesaid original petition was disposed of by this Court on 21st August 1989 permitting the Respondent to file a revision petition before the Appellant/Panchayat within one month and directing the Appellant/Panchayat to dispose of the revision in accordance with law, if filed within a period of one month. Since the Respondent filed the revision petition after the expiry of the time allowed by this Court the same came to be dismissed. The order of dismissal was challenged by the Respondent by filing a writ petition O.P. No. 9977 of 1989 before this Court which was disposed of on 19th June 1990 directing the Appellant/Panchayat to consider and dispose of the revision petition filed by the Respondent in accordance with law after affording an opportunity of being heard. As per the direction contained in the aforesaid judgment, viz. in O.P. No. 9977 of 1989 the Respondent was heard on 20th October 1990. Thereafter, considering all the averments raised in the revision petition the Appellant/Panchayat passed Ext. P-2 order, dated 26th November 1990 dismissing the revision petition. Ext. P-2 was under challenge in the present writ petition out of which the writ appeal arises which came to be allowed in the manner indicated above. Hence this writ appeal.

2. At the hearing stage learned Counsel for the Appellant/Panchayat contended, inter alia, that the building in question is let out to the bank, that the bank is paying rent to the Respondent and in that view the building cannot come within the category of "charitable hospital and dispensary" referred to in Section 72(1) (f) of the Act. Per contra it was contended for the Respondent that the hospital run by them is a charitable institution as contemplated u/s 72(1)(f) of the Act and the building bearing No. III/389 A (No. III/459) constructed by the Respondent is entitled to exemption from payment of building tax. It was also contended that the building is part and parcel of the hospital complex and that there is no profit motive in constructing the building. To buttress the aforesaid contention it was submitted that the banking facilities of the hospital, payment of salary to its employees and the banking requirements of the patients are carried out through the said bank and the banking facilities are essentially required for the smooth and proper functioning of the hospital, taking the building in question out of the category of a commercial building, not liable to be Assessed for payment of building tax.

3. Having considered the rival contentions we are of the opinion that the Appellant has made out a case for interference with the judgment of the learned Single Judge. The principles governing interpretation of taxing provisions are by now well settled by a catena of decisions of the Hon"ble Supreme Court and of this Court. In A.V. Fernandez Vs. The State of Kerala, a Constitution Bench of the

Supreme Court ruled as follows:

It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed....

In Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd., which is again a Constitution Bench decision of the Supreme Court, it was held that in interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency. In The The Martand Dairy and Farm Vs. The Union of India (UOI) and Others, Krishna Iyer, J. speaking for the Apex Court observed that after all law is not always logic and taxation considerations may stem from administrative experience and other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrian interpretation must prevail. In Goodyear India Ltd., Gedore (India) Pvt. Ltd., Kelvinator of India Ltd. and the Food Corporation of India and Another Vs. State of Haryana and Another, the Supreme Court reiterated the principle that fiscal laws must be strictly construed, words must say what they mean, nothing should be presumed or implied, these must say so, and the true test must always be the language used. In MAC Laboratories (Pvt.) Ltd. Vs. The Collector of Central Excise, Bombay, the Supreme Court specifically dealing with a claim for exemption held that the benefit of an exemption is available to only those who fall under it and to that extent the provision has to be construed strictly. Applying the aforesaid principles laid down by the Apex Court to the facts of the present case there can be no dispute regarding the liability of the Respondent for payment of building tax. The language of the statutory provision imposing liability is clear and unambiguous in that it provides that every Panchayat shall levy in its area a building tax, a profession tax and a vehicle tax and the exemption provision is attracted only in the case of of "charitable Hospitals and dispensaries" as provided u/s 72(1)(f) of the Act. It is not in dispute that the building in question is given on rent by the Respondent who owns it to the State Bank of Travancore in which event it will certainly attract liability for building tax u/s 66 of the Act. The fact that the Respondent/Society indulges in charitable activities in medical field is no reason to claim exemption from building tax in respect of a building used for commercial purposes, viz. banking, out of which rent is received and utilised by the Respondent. Going by the statutory provision the test to be applied in determining the eligibiity, for exemption is the use for which the building is put to and not the nature and character of the ownership of the building. In the aforesaid view only those buildings used as charitable hospitals and dispensaries alone are liable to be exempted from building tax u/s 72(1)(f)

of the Act. As already stated the building involved in the present case is used for carrying on banking operation and not as a charitable hospital or dispensary. Even if the banking business carried on in the building in question is for the benefit of the patients and employees of the hospital, even then, we are of the opinion that the building does not fall within the exemption granted by Section 72(1)(f) of the Act. What is material and relevant is only the activity carried on in the building in respect of which exemption from payment of building tax is claimed and that since the nature of the activities carried on in the building in question is not that of a charitable hospital or dispensary evidently Section 72(1)(f) of the Act is not attracted. In case where the legislature has intended to exempt buildings from payment of building tax on the ground that it is attached to places of worship etc. such intention is made explicitly clear by making a specific provision in that regard in the statute itself as is clear from the language used in Section 72(1)(b) of the Act. Since the exemption provision, viz. Section 72(1)(f) is confined only to "charitable hospitals and dispensaries" the Appellant/Panchayat was right in rejecting the claim for exemption as per Ext. P-2. Any other interpretation will have the effect of doing violence to the language and "altering the material with which the Act is woven" [vide Observation of Lord Denning in *Seaford Court Estates Ltd. v. Asher* (1949) 2 All E.R. 155 164 (CA.)].

4. No doubt, learned Counsel for the Respondent would contend that since the building in question is owned by a charitable society and since the income derived therefrom has been utilised for charitable purposes it is liable to claim exemption from payment of building tax. We are afraid that we cannot accede to such a contention as it will have the effect of deviating from the strict letter of the law as provided u/s 66: Taxes, cess, etc. which may, be levied by Panchayats.- (1) Every Panchayat shall levy in its area a building tax, a profession tax and a vehicle tax.

(2). . .

(3) Service taxes not exceeding such rates as may be prescribed for sanitation, water supply, scavenging, street lighting and drainage may be levied with the sanction of the Director.

(4) A duty shall also be levied in every Panchayat are on certain transfers of property in accordance with the provisions of Section 71.

(5) (i) If any Panchayat by resolution determines that a show tax shall be levied, such tax shall be levied with the sanction of the Government on all shows within the Panchayat area at the rates prescribed by Government in this behalf.

Explanation.- The term 'show' shall include any entertainment exhibition performance, amusement, game, sport or race to which persons are admitted for payment.

(ii) The tax leviable shall be payable by and recoverable from the owner of the premises where the show is conducted if he receives rent for the show or if no

rent is paid, the proprietor of the show including any person responsible for the management thereof. read with Section 72(1)(f) of the Act. In Mohammed Ali Khan and Ors. v. Commissioner of Wealth Tax AIR 1997 S.C. 1165 negating the exemption from payment of wealth tax claimed by a Ruler in respect of buildings which were let out to different persons out of which rental income was received by the Ruler it was held as follows:

In case of taxing Statute it has been held by this Court in several cases that one must have regard to the strict letter of the law and if the revenue satisfies the Court that the case falls strictly in the provisions of law, the subject can be taxed. This being the position, a fair reading of section 5(1)(iii) of the Act would reveal that only the building or the part of the building in occupation of the Ruler which has been declared by the Central Government to be the official residence under the Merged States (Taxation Concessions) Order, 1949, will not be included in the net wealth of the Assessee. The contention advanced by the learned Counsel for the Appellant that once a building has been declared as the official residence and a portion of the said building is under occupation of the Assessee then the said building should come under the, purview of Section 5(1)(iii) of the Act even if the substantial portion of the same has been rented out by the Assessee to the tenant or for any other purpose would make the expression ?in the occupation of a Ruler? redundant and those words in the provision would not have its play.

In the light of the aforesaid discussion we are of the opinion that the learned Single Judge went wrong in interfering Ext. P-2 and granting a declaration in favour of the Respondent. Therefore, we set aside the judgment of the learned Single Judge and allow this Writ Appeal and dismiss the Original Petition.