

(1999) 04 KAR CK 0033

In the Karnataka High Court

Case No : Writ Petition No. 2399 of 1999

Smt. Devatha Venkatalakshmamma Rathnam Setty
Charitable Trust, Bangalore

APPELLANT

Vs

The Commissioner, Corporation of the City of Bangalore and
Another

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 110 (b)

Citation : (1999) 4 KarLJ 545

Hon'ble Judges : P. Vishwanatha Shetty, J

Bench : Single Bench

Advocate : M/s. Kumar and Kumar, for the Appellant; Sri K.N. Puttegowda, for the Respondent

Judgement

1. The petitioner, in this petition, claims to be a Charitable Trust established for the purpose of providing for literature, scientific education, providing facilities for poor students, destitutes and orphans, amongst other objects of general public utility. A copy of the Trust Deed has been produced as Annexure-A.

2. In this petition, the petitioner has called in question the correctness of the order dated 18th of February, 1998, a copy of which has been produced as Annexure-L, passed by the second respondent refusing to grant exemption from payment of property tax u/s 110(b) of the Karnataka Municipal Corporations Act, 1976 (hereinafter referred to as "the Act"), and also the demand notice dated 2nd of January 1999, a copy of which has been produced as Annexure-M.

3. Sri Srinivas, learned Counsel appearing for the petitioner, submitted that the petitioner is a Charitable Trust and in terms of Section 110(b) of the Act, the petitioner is exempted from payment of property tax in respect of the buildings owned by it. He pointed out that though, on some occasions, the petitioner collects rents for the buildings in question, the rent so charged is exclusively used by the petitioner-Institution for charitable purposes. Therefore, he submits

that the petitioner is not liable to pay property tax in respect of the buildings in question. Secondly, he submitted that the impugned order Annexure-L came to be passed without hearing the petitioner and without giving an opportunity to the petitioner. Elaborating this submission, he pointed out that though the petitioner furnished the necessary details and claimed exemption, the impugned order came to be passed without giving an opportunity of personal hearing to the petitioner. It is his submission that as the order impugned seriously affected the rights of the petitioner and imposes a liability on the petitioner to pay huge tax, the second respondent ought to have given a personal hearing to the petitioner before passing the impugned order. Thirdly, he submitted that the impugned order is also liable to be quashed on the ground that it is not a speaking order. He pointed out that from the order impugned, it is clear that there is absolutely no application of mind with regard to the claim made by the petitioner that it is entitled for the exemption from payment of property tax on the ground that the entire rent collected by the petitioner for occupation of the buildings by others, is exclusively used for charitable purposes.

4. However, Sri Puttegowda, learned Counsel appearing for the respondents, strongly supported the impugned order. He submitted that since the petitioner is admittedly collecting rent for the occupation of the buildings in question, in terms of Section 110(b) of the Act, the petitioner is liable to pay the property tax even if the rent collected by it is exclusively used for charitable purposes. In other words, it is the submission of Sri Puttegowda that once the rent is collected for the occupation of the buildings in question irrespective of the fact whether the income derived therefrom is used for charitable or other purposes, the owner of the building is fastened with the liability to pay the property tax in respect of those buildings. Alternatively, he submitted that even if this Court were to hold that the petitioner is using the entire income derived for the occupation of the buildings in question exclusively for charitable purposes, the burden is on the petitioner to show that the entire income derived by the petitioner is exclusively used for charitable purposes; and since, in the instant case, the petitioner has failed to establish with satisfactory proof that the income of the building is exclusively used for charitable purposes, the second respondent was fully justified in passing the impugned order. He also seriously disputed the claim of the petitioner that the impugned order is not a speaking order.

5. In my view, Sri Puttegowda is not right in his submission that the owner of the buildings, for the occupation of which rent is charged, is liable to pay property tax irrespective of the fact whether the rent received is exclusively used for charitable purposes or not. Clause (b) of Section 110 of the Act, on which strong reliance is placed by Sri Srinivas, reads as follows:

"110. General Exemptions.--The following buildings and lands shall be exempted from the property tax.-

(a)

(b) Choultries for the occupation of which no rent is charged and choultries the rent charged for occupation of which is used exclusively for charitable purposes".

From the reading of Section 110(b), it is clear that the said section comprises of two parts. The first part relates to choultries for the occupation of which no rent is charged. The second part relates to the choultries for the occupation of which rent is charged and the rent so charged/derived is used exclusively for charitable purposes. Therefore, the choultries for the occupation of which rent is not charged, such choultries are exempted from the property tax, but the choultries for the occupation of which rent is charged, such choultries are not automatically exempted from payment of property tax. In such cases, the owner of the choultries are exempted from payment of property tax, provided the entire rent or income derived therefrom is used exclusively for charitable purposes. Therefore, for the second category of cases, as rightly pointed out by Sri Puttegowda, the burden is on the owner of property to show that the entire rent collected for the assessment year was exclusively used for charitable purposes during the assessment year. It is so because the assessment of tax is made every year. In my view, I am also supported by the decision of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Children Book Trust, . In the said decision, at paragraph 80, the Supreme Court has observed as follows:

"It cannot be gainsaid that the municipal general tax is an annual tax. Therefore, normally speaking, the liability for taxation must be determined with reference to each year. In other words, the society claiming exemption will have to show that it fulfils the conditions for exemption each year. If it shows, for example, that for its support it has to depend on, either wholly or in part, voluntary contributions, in that particular year, it may be exempt. But, where in that year, for its support, it need not depend on voluntary contributions at all or again if the society produces surplus income and excludes the dependence on voluntary contributions, it may cease to be exempt. Of course, the word "support" will have to mean sustenance or maintenance. Only to get over this difficulty that the qualitative test is pressed into service. We would consider the reasonable way of giving effect to the exemption, will be to take each case and assess for a period of five years and find out whether the society or body depends on voluntary contributions. Of course, at the end of each five year period the Assessing Authority could review the position. In other words, what we want to stress is, where a society or body is making systematic profit, even though that profit is utilised only for charitable purposes, yet it cannot be said that it could claim exemption. If, merely qualitative test is applied to societies, even schools which are run on commercial basis making profits would go out of the purview of taxation and could demand exemption, Thus, the test, according to us, must be whether the society could survive without receiving voluntary contributions, even though it may have some income by the activities of the society. The word "part" must mean an appreciable amount and not an insignificant one. The "part" in other words, must be substantial part. What is substantial would depend upon the facts and circumstances of each case".

(emphasis supplied)

From the order impugned, it is clear that the second respondent has not kept in mind these aspects while passing the said order. Therefore, as rightly pointed out by Sri Srinivas, the impugned order is liable to be quashed on the ground that it is not a speaking order and there is also no application of mind with regard to the relevant factors which the authorities were required to keep in mind while passing the impugned order.

6. One other question that requires to be considered is whether the petitioner was entitled for a personal hearing before passing the impugned order, as contended by the learned Counsel for the petitioner? No doubt, as contended by Sri Gowda, Section 110(b) of the Act does not contemplate giving of a personal hearing before rejecting the claim made for exemption from payment of property tax. But, in my view, having regard to the consequences that would flow from rejecting the claim for exemption from payment of property tax, it is necessary to afford a personal hearing to the person who has made a claim seeking exemption from payment of property tax in terms of Section 110(b) of the Act. If the exemption claimed is wrongly rejected, there cannot be any doubt that it would result in serious civil consequences fastening the liability on the person to pay property tax. Therefore, before rejection of the claim for exemption from payment of property tax is made, the person, who is likely to be affected, must be given an opportunity. In my view, the said opportunity cannot be considered as an effective opportunity unless the person, who is likely to be affected, is given a personal hearing. Therefore, as noticed by me earlier, I am of the view that before a claim made for exemption from payment of property tax is rejected, as required u/s 110(b) of the Act, a personal hearing should be afforded to a person who has made such claim.

7. In the light of the discussion made above, impugned order Annexure-L, dated 18th of December, 1998 and also impugned demand notice Annexure-M, dated 2nd of January, 1999 are hereby quashed.

8. The matter is remitted to the Deputy Commissioner of the Corporation, who is the Competent Authority to consider the claim of the petitioner for exemption from payment of property tax. Since the demand notice in question relates to the years 1990-91 to 1997-98 and 1998-99, the Deputy Commissioner is directed to take appropriate decision in the matter as expeditiously as possible.

9. The petitioner is directed to appear before the Deputy Commissioner (South), Corporation of the City of Bangalore, on 6th of May, 1999 at 3-00 p.m. It is made clear that the petitioner will not be entitled for any fresh notice from the respondents for the said purpose. If, on 6th of May, 1999, the petitioner fails to appear before the Deputy Commissioner, the Deputy Commissioner is entitled to take an ex parte decision in the matter in accordance with law. Liberty is reserved to the petitioner to produce such documents or evidence in support of its claim. The Deputy Commissioner shall pass appropriate orders within two

months from 6th of May, 1999.

10. However, it is made clear that till fresh decision is taken, as directed above, the respondents are not entitled to recover the property tax, as demanded in impugned notice Annexure-M.

11. In terms stated above, this petition is allowed and disposed of. Rule issued is made absolute.