
(2005) 01 KL CK 0046
In the High Court Of Kerala
Case No : O.P. No. 21572 of 1997

Sr. Poly Paradiyil	Vs	APPELLANT
Angamaly Municipality		RESPONDENT

Date of Decision : 03-01-2005

Acts Referred:

Kerala Education Act, 1958 — Section 507
Kerala Municipalities Act, 1994 — Section 235(1)

Citation : AIR 2005 Ker 194 : (2005) 1 ILR (Ker) 491 : (2005) 2 KLT 88

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : George Varghese Kannanthanam, for the Appellant; Julian Xavier, Spl.Government Pleader, P. Santhalingam and S. Sindhu, for the Respondent

Final Decision : Dismissed

Judgement

K. Balakrishnan Nair, J.—The petitioner is the Mother Superior of Congregation of the Teaching Sisters of St.Dorothy Daughters of the Sacred Heart. She is challenging Ext.P5 order passed by the 1st respondent, declining to grant exemption from payment of property tax for a building bearing door No. IX/135. The petitioner submits, the said building is a Formation House, used for educating and teaching girls, who intend to become nuns. Thus, the said building is used for educational purposes. Since, girls are educated as mentioned above, the Formation House of the Congregation should be treated as an educational institution, for the limited purpose of assessment of property tax, in terms of Section 235(1)(d) of the Municipality Act, 1994. But, the said contention of the petitioner has been rejected by the 1st respondent Municipality, by Ext.P5 and Ext.P6 demand notice has been issued. This Original Petition was filed, challenging Exts.P5 and P6.

2. It is beneficial to extract Section 235(1)(d) of the Municipality Act, which reads as follows:

"235. Exemption: (1) The following buildings and lands shall be exempt from the

property tax:

(a)
.....

(d) buildings recognised by the Government or registered with the Municipality under this Act and owned and occupied by educational institutions and used only for teaching and libraries open to public."

Relying on the above provision, the petitioner submits that the allotment of building number by the Municipality to the said building should be treated as the registration given by the Municipality and also recognition granted by the Government. Since, the Formation House of the Congregation should be treated as an educational institution and the building is owned by it, the above said building is entitled to get exemption u/s 235(1)(d), it is submitted.

3. The Municipality has filed a counter-affidavit, resisting the prayers in the O.P. It is stated that building permit was granted to the petitioner, for the construction of a building for own occupation. The building number was allotted on assessing the property tax at the first instance, after the completion certificate of the building was received from the petitioner. The same cannot be treated as recognition by the Government or registration by the Municipality, it is contended.

4. Heard the learned counsel on both sides.

5. The learned counsel for the petitioner, relying on the decision of this Court in *St. Liobha Bhavan v. Kodakara Panchayat* (1996 (1) KLT 304) submitted that the Formation House should be treated as an educational institution. Since, the building in question is owned by that educational institution and it has been granted registration by the Municipality, by allotting the building number, the said building is entitled to get exemption from payment of property tax. It is further pointed out that there is no provision for recognition of a building by the Government, or registration by the Municipality, under the Municipality Act. Therefore, the allotment of door/building number should be treated as equivalent to recognition or registration, it is contended. The learned counsel for the Municipality pointed out that the aforementioned decision is one, arising under the Kerala Panchayat Act, 1960, interpreting an entirely different statutory provision. Therefore, the said decision will not have any application in this case.

6. There is no provision for recognition of buildings by the Government or for their registration by the Municipalities under the Kerala Municipality Act, 1994. But, when Section 235(1)(d) is read along with other provisions, it can be safely assumed that the Legislature, when it used the expression "buildings recognised by the Government", meant the buildings owned by recognised educational institutions, under the provisions of the Kerala Education Act and Rules. Section 507 provides for registration of tutorial institutions. So, the expression "building registered with the Municipality", used in Section 235(1)(d) must be to mean the

buildings owned by such registered institutions. There is no provision for registration or recognition of buildings, but only for registration/ recognition of institutions. But, the said lacuna in the drafting of the Section will not, in any way, help the petitioner.

7. Even, Sir William Blackstone's Commentaries, a conservative statement of eighteenth century legal practice, recognized that gaps and ambiguities are inevitable in statutes. In resolving ambiguities, he urged that "the most universal and effectual way of discovering the true meaning of a law, when the words are dubious, is by considering the reason and spirit of it.....(f) or when this reason ceases, the law itself ought likewise to cease with it". The said principle has been followed by Lord Denning in *Seaford Court Estates Ltd. v. Asher* (1949 (2) ALLER 155) and observed as follows:

"The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the Legislature..... A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

The above statement of Lord Denning has been quoted with approval by our Apex Court in several decisions. One of the latest among them is *NEPC Micon Limited and Others Vs. Magma Leasing Limited*, .

8. Applying the above principle, the provisions in Section 235(1)(d) can be read as follows:

"buildings owned and occupied by educational institutions recognised by the Government or registered with the Municipality under this Act and used only for teaching and libraries open to public."

In fact, while drafting the provision, a jumbling of the words took place. Unless the said provision is read as above, the above provision will become meaningless and unworkable. Therefore, the interpretation sought to be given by the learned counsel for the petitioner to the provisions of Section 235(1)(d), cannot be

accepted. So, the assignment of door number or building number cannot be treated as the recognition given by the Government or the registration granted by the Municipality to a building.

In view of the said position, the second point raised by the petitioner that the Formation House is an educational institution, need not be considered in this Original Petition. Accordingly, the Original Petition fails and it is dismissed.