(1986) 06 KL CK 0010

In the High Court Of Kerala

Case No : O.P. No. 4641 of 1989

Tellicherry Madrassa Darussalam — APPELLANT

Vs

The Assessing Authority and Another — RESPONDENT

Date of Decision : 07-06-1986

Acts Referred:
Kerala Building Tax Act, 1975 — Section 3

Citation : (1989) 1 KLJ 783

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : G. Mohan, for the Appellant; K.G. Anil Bubu, Government Pleader, for the Respondent

Judgement

K. Sukumaran, J.—The petitioner, a Society registered under the Societies Registration Act 21 of 1860 complains about the omission of the assessing authority under the Building Tax Act, in referring a question of exemption u/s 3 of the Act, to the Government for its decision. The assessing authority, the Tahsildar, issued a notice Ext. P7 on 10-11-1987 calling upon it to submit a return. Sometime later, Ext P8 notice u/s (6) (2) was issued indicating the annual value of the building, and directing the petitioner to show cause against the proposal. After an adjournment sought for under, Ext. P9, a detailed reply was made on 22-3-1989. That, among others made a claim u/s 3. The fact that the petitioner is a religious and charitable institution, and that it provides food and roof to about 400 orphans, and additionally gave to them free education, was emphasied therein. It is unnecessary to go into the details of the claim or the objections which the assessing authority felt to be in existence in allowing the same. The claim was not considered in the proper perspective and appropriate action was not pursued as mandated by the statutory scheme - is the complaint of the petitioner. The petitioner is seen to have been served with a notice of demand and an assessment as evidenced by Exts. P11 and P12 dated 28-2-1989.

2. According to the petitioner, there was an unjustified abdication of the statutory

duty on the part of the assessing authority when the claim for exemption u/s 3 had been projected before him and when the statute, in such a situation, mandated a reference of the claim of exemption to be adjudicated solely and exclusively by the Government.

3. The learned Government Pleader, who took time to consider the scope of the Section, and scrutiny of the averments in the original petition, contended principally that the claim may not be fully justified having regard to the usage of a part of the building for non-charitable purposes. There was no specific prayer for reference and consequently the petitioner may not be entitled to approach this Court for reliefs in the form of a compelling reference of the question to the Government.

4. I find the resistance on the part of the Government too fragile to prevail against the petitioner''s substantial contention. As regards the former contention, this is too premature a stage for expression of any opinion. The Government is the designated authority for adjudicating on the question. Whether the claim is justified or not is a matter for that authority-Government-to decide. This Court should not be tempted to indicate any opinion at this stage.

5. On the second aspect, notwithstanding the lack of effort on the part of the petitioner to specifically pray for a reference, it is entitled to relief when, substantially, a case for reference is made out.

6. Orphanages - real ones and not make - belief arrangements - have enjoyed, from very early times, a sympathetic and special treatment even at the otherwise heartless tax men. History reveals how even in the time of Nicholas I, tax was imposed on card playing to provide food for orphanages, It is unnecessary to peep into the pages of history where taxation makes special provision for exemption for charitable purposes. Even in the former Madras Presidency to which the place in which the petitioner Yatheemkhana is now situated, charitable organizations had justifiably enjoyed official patronage. That was the case when a small one was organised by a benevolent English lady with seven orphans in the place where fort and port now stand. In tune with the ethos and emotions of that age, many a charitable institution was organised; and many flourished, doing limited but good service to those without food and those without roof. It is that approach and attitude that has reflected in a salutory provision contained in Section 3 (2) of the Enactment. This historical background may perhaps afford a better facility for evaluating rival contentions. Looking at the pure and abstract legal matters, I have no difficulty in noting an obligation on the part of the assessing authority to make a reference to the Government when the question appears before him in any significant form. The moment a claim is put forward, it could be said that a question has arisen in relation to that claim This is particularly so, if the claim is not immediately conceded. An adjudicatable issue is there in the embryonic form. Much more development is discernible under Ext. P10. The petitioner furnished fresh flesh and new blood into the skeletal contention indicated earlier. The factual details too, - details relevant for

the consideration of the question - had been furnished thereunder. It may be an impossible feat then to say that the question has not arisen.

7. The Legislature in its wisdom must have thought that rather than entrusting the adjudication of the questions of exemptions, to the assessing authorities, the Government itself is empowered to do so. It may serve a larger purpose so that adequate and well informed attention could be given to every aspect of the claim. It is quite likely that a busy assessing authority and of a lower cadre may be unable to grasp many a principle borrowed from the legal history of the working of the charitable institutions Some times complicated and complex factual matters can arise. Even legal complications are not insignificant. Whatever be the purpose, one thing is clear. The Government marked out for itself, an area of adjudication. In that area, none can tresspass upon. For the assessing authority, it is a prohibited area; it is doubtless so for the appellate or revisional authorities. Even an ordinary civil court is interdicted from entertaining such question, by a specific statutory provision u/s 3.

8. In the light of the above observations, I am clearly of the view that an obligation to refer the question, on the part of the assessing authority did arise in the circumstances. In not discharging that obligation, despite its being requested in that behalf by Ext. P10, he committed an error. He abdicated his statutory duty. This omission, a grievous one, is remediable by the intervention of this Court. The assessing exercises resorted to by him without complying with a pre-condition in relation to the statutory obligation is equally denuded of jurisdiction. In that view of the matter, I quash Exts. P11 and P12 and restrain recovery proceedings based on them. It is better for all concerned that a disconcerting unpredictability of the tax liability is brought to an end sooner than later. The assessing authority shall, within 10-days from today, make a reference to the Government. It is unnecessary to remind the Government to dispose it of quickly, since, as a functionary needing much money, it cannot be oblivious of the necessity for an expeditious disposal of the question on which rests the further assess ability or otherwise of the building in question.

The writ petition is disposed of as above.

