(1990) 12 KL CK 0015

In the High Court Of Kerala

Case No : O.P. 7544 of 1986 W

The Superior, Asha Bhavan	APPELLANT
Vs	
State of Kerala and Another	RESPONDENT

Date of Decision : 11-12-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Kerala Panchayat Act, 1960 — Section 66, 72, 72(1)

Citation : (1990) 12 KL CK 0015

Hon'ble Judges : K.P. Radhakrishna Menon, J

Bench : Single Bench

Advocate : M.I. Joseph, for the Appellant; Government Pleader, for Respondent 1 and K.S. Menon, for Respondent 2, for the Respondent

Judgement

K.P. Radhakrishna Menon, J.—The Petitioner is the owner of the building known as ''Asha Bhavan''. The building is used as a hostel to accommodate ''sister nurses'' and other sisters working in the St. Philomina Hospital.

2. The building, according to the learned Counsel for the Petitioner, is one coming within the meaning of Section 72(1) of the Kerala Panchayats Act, 1960 and hence not liable for building tax. The counsel for the Panchayat on the other hand argues that the building is used as a convent and as such not exempt from building tax. As a matter of fact, it is further contended, building tax has been levied since 1981-82 onwards.

3. The question arising for consideration is: Is the building in dispute one coming within the meaning of Section 72(1) and as such not liable for building tax.

4. The building, according to the counsel for the Petitioner, is not used by the nurses and laboratory technicians attached to the hospital as their residential quarters; on the other hand it is only a hostel and hence beyond the purview of the charging section, Section 66. This argument cannot be taken cognisance of in view of the explanation to Section 72(1) which reads:

The exemption granted under this section shall not extend to residential quarters attached to school and colleges not being hostels or to residential quarters attached to hospitals, dispensaries and libraries.

The language employed in the explanation makes it clear that a building used as hostel attached to schools and colleges also is exempt from tax. This concession however, has not been extended to hostels attached to dispensaries and hospitals. Hence the above argument of the counsel is rejected.

5. If that be the position, the counsel argues, the said explanation must be held to be discriminatory or in any event unreasonable and hence hit by the prohibition contained in Article 14 of the Constitution of India. In support of this argument the counsel relied on a ruling of the Supreme Court in State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others, . He made particular reference to the following excerpt from the said decision:

A statutory provision may offend Article 14 of the Constitution both by finding difference where there are none and by making no difference where there is one. Decided cases laid down two tests to ascertain whether a classification is permissible or not, viz. (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question.

These two tests, according to the learned Counsel, are not satisfied in this case and therefore the explanation is liable to be held to be hit by Article 14 of the Constitution. I am not impressed by this argument. The approach suggestive in the above argument of the counsel cannot be taken cognisance of while considering the challenge to levy tax as discriminatory on the ground that the exemption is granted to some alone of the apparently same group. It is for the legislature or the taxing authority to determine the taxing policy. Granting of exemption from tax is part of the taxing policy. Courts cannot review the wisdom or expediency of a tax because the Court is unconcerned with the policy of legislation so long as the same is not inconsistent with the provisions of the Constitution. However where there is transgression of the legislative power in levying the tax the same will be corrected by the judiciary and not otherwise, although taxes may be and often are oppressive, unjust and perhaps may be said to be unnecessary. But this would not constitute the reason for judicial interference. It is profitable to bear in mind the following observation of Cooley namely:

Every tax must discriminate; and only the authority that impose it can determine how and in what directions.

I am fortified in this view by a decision of the Supreme Court in Sri Krishna Das v. Town Area Committee, Chirgaon (1990) 3 S.C.C. viewed in this background the above argument of the counsel for the Petitioner that the explanation is discriminatory and hence hit by the prohibition contained in Article 14 of the constitution is not sustainable. The same therefore is rejected.

6. The learned Counsel for the Petitioner then argued that the order under challenge is not a speaking order. It in my view, is a speaking order because the Government have given the reason to reject the complaint, the reason being that the explanation to Section 72 does not entitle the Petitioner to claim the exemption. The order reads so. If that be the position this argument is also liable to be rejected.

The O.P. for the reasons states above is dismissed. No costs.

