

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WA.No. 1591 of 2012 IN WP(C) NO.16857/2009

AGAINST THE JUDGMENT IN WP(C)NO. 16857/2009 of HIGH COURT
OF KERALA DATED 04-04-2012

APPELLANT/PETITIONER:

SREE NARAYANA DHARMA SAMAJAM,
AYYAPPANKAVU, KOCHI-18,
REPRESENTED BY ITS SECRETARY.

BY ADVS.DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS/RESPONDENTS:

1. COMMERCIAL TAX OFFICER
(LUXURY TAX & WORKS CONTRACT),
OFFICE OF THE DEPUTY COMMISSIONER,
COMMERCIAL TAXES, ERNAKULAM-682 004.

2. THE INTELLIGENCE OFFICER (IB),
DEPARTMENT OF COMMERCIAL TAXES, EDAPPALLY
KOCHI-682024.

3. THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM-695 001.

4. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

BY SPECIAL GOVERNMENT PLEADER
SRI. SEBASTIAN CHAMPAPPILLY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON
07-04-2015, THE COURT ON 04-08-2015 DELIVERED THE
FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.

W.A. No.1591 of 2012

Dated this the 4th day of August, 2015

JUDGMENT

Harilal, J.

1. The questions that arise for consideration in this writ appeal revolve around the proviso to Sub-section (1) of Section (4) of the Kerala Tax on Luxuries Act, 1976 (for short 'the Act'). Precisely, they are: What does the expression “premises” employed in the above provision mean and intend? What is the territorial extent implied in the expression 'premises' in the said provision.
2. The appellant is a charitable institution registered under the Travancore-Cochin Literary and Scientific and Charitable Societies Registration Act, 1955. The

appellant is managing and administrating the temple known by name 'Ayyappankavu Temple' and runs a Higher Secondary School, another English Medium School and having an Auditorium. According to the appellant, the Auditorium is situated within the premises of the temple, a place of worship, as contemplated under proviso to Sec.4(1) of the Act, though there lies a road in between the temple and the Auditorium. So, there cannot be any instance of luxury tax in view of the exemption granted under the said proviso to the said section. But without any regard to the said provision, Exts.P12 to P14 orders imposing penalty under Sec.17A and Exts.P15 to P17 demand notices were issued. Feeling aggrieved, the writ petition was filed challenging the rejection of the plea of exemption claimed under the proviso to the said section. In addition to the said claim, the appellant sought for a declaration that Sec.4(2)(c)(1) of the Act is ultra vires of the Constitution of India.

3. The respondent opposed the said claim of exemption contending that the temple and the Auditorium are not located in the same premises and

they are functioning as different and distinct entities. The Auditorium is situated on the eastern side of the P.W.D. road by name 'Chittoor Road'; but the temple is situating on the western side of the said road. So also, there lies another road by name 'Ayyppankavu East Extension Road', which branches off from the Chittoor Road towards eastern side between the temple ground and the Auditorium. In short, since the roads lie in between the sites where temple and Auditorium are situated, the Auditorium shall be deemed to be located outside the premises of the temple contrary to the statutory requirements under the proviso to Sec.4(1) of the Act.

4. After considering the rival pleas raised factually as well as legally, the learned Single Judge rejected all the contentions raised by the appellant challenging the legal and constitutional validity of Sec.4 of the Act relying on various decisions held by the Apex Court. So also, the learned single Judge rejected the claim of exemption raised under the proviso to Sec.4(1) of the Act; but remanded the matter back after setting aside all the penalty orders

to reconsider the question of penalty and to pass orders afresh. The legality and propriety of the finding whereby the learned Single Judge rejected the said claim of exemption is challenged in this writ appeal on various grounds.

5. Heard Dr. K.B. Mohamed Kutty, the learned senior counsel for the appellant and Dr. Sebastian Chemappilly, the learned Special Government Pleader for Taxes.

6. Though this appeal is seen filed on various grounds, the learned counsel for the petitioner premised his arguments in extenso challenging the findings whereby the learned single Judge rejected the claim of exemption under the said proviso. The sum and substance of the arguments is that the learned single Judge erred in conceiving the location of the Auditorium and misconceived the territorial extent implied in the expression "premises" employed under the said proviso. According to the learned counsel, the learned single Judge failed to appreciate the legislative intent for granting such an exemption to place of worship owned by religious

institutions and the said interpretation given by the learned single Judge would defeat the object of the said provision.

7. Per contra, the learned Special Government Pleader advanced arguments to justify the impugned judgment. According to the Special Government Pleader, the appellant is not entitled to get any benefit under the proviso either on facts or in law. It is also contended that the learned single Judge correctly interpreted the expression 'premises' of the place of worship and laid down that the Auditorium is located out side the premises of the place of worship.

8. Going by the impugned judgment, we find that the learned single Judge elaborately considered all the contentions challenging the constitutional validity of Sec.4 of the Act and the power of legislation of the States for imposing tax on luxury and rightly rejected all the contentions relying on the decisions held by the Supreme Court in East India Hotels Ltd., and another v. State of Jammu and Kashmir and another [(1995) 3 KTR 37]; Express

Hotel Pvt. Ltd., v. State of Gujarat and another [(1989) 74 STC 157] and Tamil Nadu Kalyanamandapam Association v. Union of India (AIR 2004 SC 3757). We are in full agreement with the said findings of the learned single Judge which are based on the decisions of the Apex Court and we do not find any reason to interfere with the said findings.

9. The remaining point is whether the Auditorium in question is located within the 'premises' of the temple as contemplated under the proviso to Sec. 4 (1) of the Act. For a proper understanding and better appreciation, the relevant portion of Sec.4(1) of the Act is extracted below:

“4. Levy and collection of luxury tax.-- (1)
Subject to the provisions of this Act, there shall be levied and collected a tax, hereinafter called the 'luxury tax', in respect of any luxury provided,-

(i) in a hotel, house boat, hall,
Auditorium or
kalyanamandapam or including
those attached to hotels, clubs,

Kalyanamandapam and places of the like nature which are rented for accommodation for residence or used for conducting functions, whether public or private, exhibition;

(ii) by cable operators;

(iii) in a hospital; and

(iv) in a home stay

Provided that the sub-section shall not apply to halls and Auditoriums located within the premises of 'place of worship' owned by such institutions;

Provided that the sub-section shall not apply to Halls and Auditoriums located within the premises of 'places of worship' owned by such institutions."

10. It is apparent that the exemption is given to the Halls and Auditoriums located within the premises of the place of worship. But, the word 'premises' is neither defined in the act; nor given in Illustration or Explanation under the said Section. What does the word 'premises' mean and intent? Is it a flexible

term? The word 'premises' in popular language commonly intended to mean and includes 'land and building'. On a survey in various dictionaries, such as Cochran's Law Lexicon, IV Edition; Black H.C. Law Dictionary IV Edition; Wharton's Law Dictionary; Webster's New International Dictionary; Earl Jowitt, Dictionary of English Law; Ballentine, J.A., Law Dictionary with Pronunciation, II Edition etc., the meanings are seen variant. In Advanced Law Lexicon by P. Ramanatha Iyer, the word 'premises' is given different meanings on the basis of the definitions given in various enactments. On a survey in various enactments like Insecticide Act (Act 46 of 1968), Public Premises (Eviction of unauthorised occupants) Act, (Act 40 of 1971), Weight and Measures Act (Act 60 of 1976), Control of National Highways (Land and Traffic) Act, 2002, Air Port Authority of India (Amendment) Act (Act 43 of 2003), Trade Mark Act, Electricity Act etc., it could be seen that the word 'premises' is defined differently and distinctly in accordance with the aim and object of each enactment.

11. Going by the judicial precedents of various High Courts and the Supreme Court also the expression 'premises' is seen interpreted in view of the definition given in each enactment under which the decisions are laid down. Consequently, those interpretations are also different and distinct. In short, either the dictionary meanings or the interpretations given in judicial precedents do not render any help to understand the meaning of the word 'premises' employed in Sec.4 of the Act. But what is decipherable from the dictionary meanings and judicial precedents is that it is not possible to conceive a concise, precise or definite meaning; whereas the word 'premises' is a very wide comprehensive word depending upon the context in which it is employed in the Enactment. Put it differently, the word 'premises' assumes its meaning on the basis of the context in which the word is employed in the provision and it is an elastic inclusive generic term. In the case of a particular provision of the Act, unless it is defined otherwise, the word 'premises' assumes its meaning on the

basis of the purpose or the legislative object for which the said provision is intended.

12. Keeping the above view in the mind, let us revert to the 'premises' employed in Sec.4 of the Act. On an analysis of the context in which the expression 'premises' employed in the proviso to Sec.4, it could be seen that the legislative object is to give an exemption from tax on luxury to religious institutions for the halls and Auditoriums owned by such institutions, provided that they must be located within the premises of the place of worship. The common ownership of the religious institution over the place of worship and Auditorium or Hall and the location of the Auditorium or Hall in the premises of the place of worship are the twin conditions to be satisfied to get exemption. In our view, what is intended in the specific prescription of the location by employing the expression 'premises' is that the Halls and Auditoriums must have been intended for the usage of the place of worship also. Needless to say, it follows that the location is specifically prescribed to make sure that the halls and

Auditoriums are being used for the purpose of such place of worship also. If the Halls and Auditoriums are located far away from the place of worship, though owned by the same religious institutions, it cannot be presumed that they are intended for the usage of place of worship such as temple, mosque, church etc. The proximity is the significant feature of the usage for the said purpose; but the provision does not prescribe that both Auditorium and temple must be in the same site surrounded by a single boundary. A reasonable and purposive meaning that can be given to the 'premises' in the above context, includes the area in and around the place of worship, irrespective of the boundary wall or fencing or road. The usage of the Hall or Auditorium for the purpose of place of worship assumes much significance rather than topographical separation by wall or boundary or roads. But the Hall or Auditorium must have been situated very near or around the place of worship, notwithstanding the separation by boundary and the place of worship must have been using the Auditorium for its purpose

also. In short, the Hall or Auditorium must have been inseparably connected with the activities of the place of worship. If the income from the Auditorium is being used for the place of worship, the said fact would go a long way to establish the inseparable connection of the activity between them. We are of the considered opinion that merely on the reason that a road lies in between the place of worship and the hall or Auditorium or both are not situated in the same site within the common boundary or situated in property comprised in different survey numbers, the exemption under the proviso cannot be denied mechanically without considering the usage of the hall or Auditorium for the purpose of the place of worship also. In the absence of specific prescription, the Hall or Auditorium need not be specifically intended for the exclusive usage of the temple only. We hasten to add that a contrary interpretation would defeat the object of the said provision.

13. With the above view let us examine the case on hand. In our view the reasons that the road lies in between the temple ground and Auditorium and they

are not surrounded by single common boundary do not disqualify the appellant/petitioner from claiming exemption under the proviso to Sec.4(1) of the Act, particularly when the Auditorium is located on the opposite side of the temple ground, according to the report filed by the Commercial Tax Officer himself. Earlier, the Commercial Tax Officer himself found in the impugned penalty order that the Auditorium is located far away from the temple. We find that the latest report dated 7/3/2015 filed by the present Commercial Tax Officer falsifies the above earlier findings. According to the present Officer, the distance between the temple and Auditorium is 106 Meters only and the Auditorium is situating at the just opposite side of the temple ground. The fact that Auditorium is on the northern side of the road does not make it beyond the premises of the temple for disqualifying the Auditorium from claiming the benefit of the proviso. The existence of a road between the place of worship and the Auditorium will not deprive the Auditorium from claiming exemption under the proviso.

14. But here though the petitioner/appellant has specifically contended in the statement of objection that the Auditorium is inseparably connected with the activities of the temple and is being used for conducting temple feast or 'annadhanam'. No material has been produced to substantiate such usage of Auditorium for the said purposes of the temple. So also, the Commercial Tax Officer has not ventured to embark an enquiry as to whether the Auditorium is being used for the purpose of the temple also, on an assumption that the Auditorium is situated on the opposite side of the road in a different plot and it cannot be treated as premises of the temple, though both are owned by the petitioner/appellant. We feel that such an enquiry needs to be conducted for the same and the petitioner/appellant must be given an opportunity to substantiate such usage of the Auditorium for the requirements of the temple also. It is made clear that if the petitioner/appellant succeeds in producing the materials to establish usage of the Auditorium for the requirements of the temple also, certainly the

appellant/ petitioner is entitled to get the benefit under the proviso notwithstanding the separation by the road.

15. Coming to the question of penalty under Sec.17A of the Act, as rightly observed by the learned single Judge some element of 'mensrea' is also insisted to see whether there was any conscious effort on the part of the assessee to defraud the Revenue, so as to sustain the penalty. Penalty is not something mandatory under the statute; but is a consequence where some discretion is vested with the authorities concerned on proven deliberate attempt of tax evasion. We also endorse the views of the learned single Judge in this respect.

16. In the instant case, the contention raised in the detailed statement of objection filed by the petitioner is that there was no wilful omission or deliberate attempt to evade the tax; nor was there any failure to keep the account properly. It was also asserted that the petitioner was under the bona fide impression that he is entitled to have exemption by virtue of the proviso to Sec.4 of the Act as the

Auditorium is located very near and close to the temple and mainly intended for the temple rituals such as 'annadhanam'. It is pertinent to note that the exemption is denied by the Commercial Tax Officer mainly on the reason that a road lies in between the temple ground and the Auditorium and the properties are comprised in different survey numbers. We are of the opinion that conscious evasion of tax to defraud the revenue is a matter to be considered in view of the bona fides of the reasons stated for not taking registration and paying tax thereunder.

17. Going by the penalty orders, it could be seen that there is no finding to the effect that there was a wilful evasion of the tax liability or reasons stated for not paying tax lacks bona fides. More over Exts.P12 to P14 orders imposing penalty do not provide any detail as to how the figures are obtained. Needless to say, the impugned orders challenged in the Writ Petition are devoid of reasonings and thereby unsustainable and liable to be quashed. The learned single Judge is justified in quashing Exts.P12 to P14

penalty orders. But we are of the opinion that a further enquiry need not be conducted again in the absence of conscious evasion of tax. We find no reason to reject the contention that failure to take registration was the result of a bona fide impression that they are entitled to get exemption under the proviso to Sec.4 of the Act. Consequently, the direction given by the learned single Judge to conduct a fresh enquiry as to the question of penalty will stand set aside.

18. But we have already found that a further enquiry needs to be conducted so as to enable the petitioner to produce materials to substantiate their contention that the Auditorium is being used for the purpose of temple also though the Auditorium is situating on the opposite side of the temple ground and separated by a road. Hence all the findings of the learned single Judge rejecting the claim of exemption under the proviso to Sec.4 of the Act are set aside and the matter is remitted back to the original authority for the limited purpose stated above. It is made clear that if the original authority

will be satisfied of the petitioner's contention that the Auditorium is being used for the temple purpose also and it is so connected with the temple activities, certainly the petitioner will be entitled to get exemption under the proviso and in case the petitioner will be entitled to refund of the amount already remitted as tax. The Commercial Tax Officer shall pass an order afresh in view of the above observations after affording an opportunity of being heard and produce the materials to the petitioner, at any rate, within a period of five months from today.

This writ appeal is allowed in part to the above extent.

Sd/-

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge