IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WA.No. 2065 of 2012 () IN WP(C).30596/2006

AGAINST THE ORDER/JUDGMENT IN WP(C) 30596/2006 of HIGH COURT OF KERALA DATED 10-06-2009

AGAINST THE ORDER/JUDGMENT IN RP 891/2010 of HIGH COURT OF KERALA DATED 26-07-2012

APPELLANT(S):/PETITIONER/ REVIEW PETITIONER

REV.FATHER ANTO CHIRAPARAMBIL
FATHER SUPERIOR, VINCENTIAN ASHRAM
THACHAMPARA P.O. PALAKKAD DISTRICT.

BY ADVS.SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN

RESPONDENT(S):/RESPONDENTS/RESPONDENTS
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1. STATE OF KERALA
REPRRESENTED BY ITS SECRETARY,
DEPARTMENT OF REVENUE
SECRETARIATE, TRIVANDRUM

2. THE TAHSILDAR,
TALUK OFFICE, MANNARKAD,
PALAKKAD DISTRICT.

R1, R2 BY DR.SEBASTIAN CHAMPAPPILLY,
SPL. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

....

W.A.No.2065 of 2012

....

Dated this the 9th day of January, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Admitted. The learned Special Government Pleader for Department of Commercial Taxes takes notice for the respondents.

2. On consent of parties, heard finally.

3. The short issue arising for decision is as to whether the appellant/petitioner is entitled to an order of exemption under Section 3(1) of the Kerala Building Tax Act, 1975, “Act”, for short. The claim for exemption was projected before the Government on the premise that the building is used principally for religious purposes. The request was considered and decided by the Government on the premise that apart from the rooms in the ground floor, first floor is used for residential purpose. But there was no finding at all at the hands of the Government that any

resident or any person in that area was unconnected with the religious purposes. We may here recall that while the writ petition was initially dismissed by the learned single Judge, a review petition was entertained and a fresh report was called for from the jurisdictional Tahsildar. Looking into that report, the learned single Judge had granted a limited relief, thereby exempting the appellant-petitioner from paying luxury tax under the Act, having regard to the entire plinth area as available through the report of the Tahsildar. But a complete reading of the report of the Tahsidar, Mannarkkad Taluk, as available along with the memo submitted by the learned Government Pleader on 26.07.2012 before the learned single Judge in RP No.891 of 2010, would show that the whole building is put for religious use in as much as there is a chappal where there is religious prayer conducted every day in the ground floor and nearby villagers attend the prayer. The rest of the building is used in such a way that three priests are staying in the ground floor and in the rooms available in the first floor priest students from outside come and stay occasionally and religious camps are also conducted. Public are not allowed to stay in that building. A kitchen is there to cook food for those who come to the building for such purposes. Taking all those into consideration, we cannot but hold that the only reasonable approach that ought to have been adopted by the Government is that the petitioner is entitled to exemption from payment of tax under the Act, as regards the building in question.

4. The learned counsel for the appellant is justified in relying on the decision in <u>Mother Superior Adoration Convent</u> v. <u>Government of Kerala and Another</u> [2008(1)KHC 345]. The building in question in the case in hand is not one which could be treated as a building independent of religious purposes. Under such circumstances, this appeal is entitled to succeed.

In the result, this appeal is allowed as follows:

(i) The impugned judgment of the learned single Judge in WP(C) No.30596 of 2006 dated 10.06.2009 is vacated.

(ii) The impugned order in R.P.No.891 of 2010 dated 26.07.2012 is also vacated, since it is unnecessary as a consequence of relief No.(i) granted above.

(iii) The impugned Government Order, Ext.P5 in the writ petition, is quashed.

(iv) It is declared that the appellant-petitioner is entitled to exemption from the provisions of the Act for the building in relation to which exemption was sought for, but was rejected as per Ext.P5.

(v) The amount paid by the appellant-petitioner towards demands under the Act shall be refunded within three months.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

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