IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 28TH DAY OF JANUARY 2015/8TH MAGHA, 1936

WA.No. 92 of 2015 () IN WP(C).29865/2008

AGAINST THE JUDGMENT IN WP(C) 29865/2008 of HIGH COURT OF KERALA DATED 21-10-2014

APPELLANT/PETITIONER:

ARTS SOCIETY ASHTAMICHIRA,
A REGISTERED SOCIETY HAVING REGISTRATION NO 112/80
AND HAVING REGISTERED OFFICE AT ANNAMANADA,
REP BY ITS PRESENT SECRETARY, SABU M.S. SHAIK
PAREED, MANAKKULANGARA HOUSE,
ASTAMICHIRA DESOM, THRISSUR DISTRICT.

BY ADV. SRI.SHEEJO CHACKO

RESPONDENT(S)/RESPONDENTS:
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1. STATE OF KERALA,
REP BY SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM-695 001.

2. TAHSILDAR,
MKUNDAPURAM TALUK, IRINJALAKUDA,
THRISSUR DISTRICT-680 121.

3. THE DISTRICT COLLECTOR,
THRISSUR-680 001.

4. VILLAGE OFFICER,
VADAMA VILLAGE VADAMA-680 732.

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5. REVENUE DIVISIONAL OFFICER,
THRISSUR-680 001.

BY SENIOR GOVERNMENT PLEADER
SRI. LIJU V. STEPHEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 28-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

THOTTATHIL B. RADHAKRISHNAN &
K. HARILAL, JJ.

W.A. No.92 of 2015

Dated this the 28th day of January, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Heard the learned counsel for the appellant/petitioner quite in extenso.

2. Under challenge is a judgment of the learned single Judge refusing to interfere with the denial of exemption from the provisions of the Kerala Building Tax Act, 1975, 'the Act', for short.

3. Going by the materials, we see that the petitioner, a Society registered under the provisions of Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, claimed exemption on two grounds.

4. Firstly, it was contended that the petitioner carries on charitable purposes and the building in relation to which exemption was sought for, is one which is put to charitable use.

That did not find favour with the Government since it found that barring certain occasional charitable activities, it cannot be held that the auditorium is put to exclusive use for charitable purposes. That is a finding on issues of fact. On the basis of the case and materials, that finding is not one unavailable on the records, or perverse. We see no reason to interfere with the impugned judgment in that regard. The statutory exemption claimed on the basis of Section 3 therefore fails.

5. Secondly, it was contended that the building was put up using Government funds. An exemption on that ground would be available only if the Government takes an executive decision in that regard and issues a notification granting exemption in terms of sub-section (2) of Section 3A of the Act, which is very much different from the eligibility to statutory exemption that would flow once the requisite conditions are satisfied in terms of different clauses of Section 3 of the Act. As regards Section 3A (2) of the Act, the requirement is that the Government input of funds should be at least 25%. Even before the learned single Judge the petitioner could not establish the minimum requirement of Government input of 25% of cost of construction. On the materials, the learned single Judge could not but accept the stand of the Government that the Government support was only to the tune of 18%, all taken together. The learned single Judge further noted that no materials were placed by the

petitioner supporting the claim for such exemption, either before the Government or before the learned single Judge. We do not see any pleading in the writ petition saying that documents were actually produced before the Government during the consideration of the application for exemption and as to what were the documents which the appealing petitioner claims to have produced. Nor is there any plea in this appeal that such materials were placed in the writ petition; even if we were to act on the belated placement of any such material; without it being placed in the statutory hierarchy.

6. Even then, going by Section 3A(2) of the Act, the matter is entirely within the domain of the Government to consider whether it considers it necessary to grant such an exemption. This is the law in terms of the statutory provisions which govern such an exemption. That being in executive domain, it cannot be impeached, except when it is perverse. Nothing is on record to invalidate the Government's order in that regard.

7. Though a request is made on behalf of the appellant to direct the Government to consider an application, stated to be pending seeking review of the Government's decision, we are not persuaded to so direct. We say so because a decision under Section 3A(2) of the Act and the one under Section 3(1) of the Act are essentially statutory; and, the Act does not provide any power to review an original order of the Government rendered

under those provisions. The power to rectify provided under Section 15 of the Act does not include any power of review of the original orders of the Government. We hence reject that request and hold that the so-called application of review stated to be pending before the Government is incompetent.

8. For the aforesaid reasons, we see no ground to interfere with the decision of the learned single Judge, or, to issue any further order in favour of the appealing writ petitioner.

In the result, this writ appeal is dismissed.

Sd/-

(**THOTTATHIL B. RADHAKRISHNAN, JUDGE)**

Sd/-

(K. HARILAL, JUDGE)

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P.S. to Judge