IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

TUESDAY, THE 29TH DAY OF SEPTEMBER 2015/7TH ASWINA, 1937

WA.No. 601 of 2014 () IN WP(C).37661/2007

AGAINST THE ORDER/JUDGMENT IN WP(C) 37661/2007 of HIGH COURT OF KERALA DATED 24-01-2014

APPELLANT(S)/WRIT PETITIONER:

MOTHER SUPERIOR
ST.JOSEPH CONVENT, KUMBALAM, KANAYANNOOR TALUK
REPRESENTED BY PRESENT MOTHER SUPERIOR, SR.SHEEBA.

BY ADV. DR.K.P.PRADEEP

RESPONDENT(S)/RESPONDENTS:
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1. GOVERNMENT OF KERALA
REVENUE (SPECIAL CELL) DEPARTMENT
REPRESENTED BY DEPUTY SECRETARY
TO THE GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. TAHSILDAR
KANAYANOOR TALUK, TALUK OFFICE,
ERNAKULAM-682018.

BY DR.SEBASTIAN CHAMPAPPILLY,
SPL.GOVERNMENT PLEADER (TAXES)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

jg-11/11

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

....

W.A.No.601 of 2014

....

Dated this the 29th day of September, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. This writ appeal is against the judgment of the learned single Judge refusing to interfere with the decision rendered by the Government on an application for exemption under Section 3 of the Kerala Building Tax Act, 1975, ('KBT Act', for short).

2. The owner of the building is the appellant. Challenge is regarding the extent of refusal to grant exemption. Heard the learned counsel for the appellant and the learned Special Government Pleader for the Department of Taxes.

3. Paragraph Nos.2 & 3 of the order of the Government, which is

Ext.P4 in the writ petition, read as follows:

> "2) The Tahsildar, Kanayannur reported as per third paper above that it is a two storied building having plinth area of 484.58 M^2 in Ground floor and 274.73M^2 in first floor. The building is used for the residence of the sisters in the Convent. The Ground floor is used as Chapel, Dining room, Kitchen, and for the resident of the nuns. The first floor is used for the residence of nuns, Library Councilling Hall, Training of tailoring classes. The Tahsildar has re-inspected the building and since reported that the building is now having a plinth area of 899.03M^2. He has also reported the area wise use pattern of the building as follows:-

<u>Ground Floor</u>		
Church	-	103.36M^2
Porch	-	36.00M^2
5 rooms for the residence of Nuns	-	105.78M^2
Others	-	291.33M^2
Total	-	536.47M^2
<u>First Floor</u>		
6 rooms for the residence of Nuns	-	126.94M^2
Sheeted area of the roof of Church	-	103.36M^2
Others	-	118.82M^2
Total	-	349.12M^2

Total Plinth area - Ground floor	-	$536.47M^2$
First floor	-	$349.12M^2$
Stair Cabin	-	$13.44M^2$
Grand Total	-	$899.03M^2$

3) Government have examined the matter in detail. The assessee was given a chance for personal hearing on 18.05.2007. The Council (sic) of the assessee and the Deputy Tahsildar were present. The counsel claimed that the convent building constitutes a chapel for public worship and other connected buildings are used for stay of sisters and for Counselling of people suffering from mental agony and disorder. A major portion of them are women particularly at the old age. There is a social work centre at the premises of the convent where unemployed poor women folk of the locality are engaged in job works for their daily family maintenance. The convent building is used for religious activities. No portion of the buildings have been rented out and not used for commercial purposes. No income is earned from the buildings. Accordingly the building is eligible for exemption from building tax."

4. The aforesaid factors clearly show that nuns stay in different rooms in the ground floor and in the first floor. The single building houses a church as well. The first floor also has library, counselling hall and a training hall for tailoring classes. Taking the entire extent of the ground floor and the first floor together and having a pragmatic view of the entire facts situation, it needs to be understood that when nuns reside, they have to have the necessary requisites to support a collective social living. Existence of a dining hall, chapel and kitchen in the ground floor only points out the fact that there is a collective social living of the nuns in the building, which also houses chapel. They also extend counselling to women, particularly of old age and also to mentally challenged, who have different disorders. They also extend an arm of help to the local marginalised women to provide an opportunity to make a living through tailoring. There is no material with the Government, or even a suggestion, that any income is derived from any portion of the building either by way

of rent or through commercial activity. With these materials, it was an abundantly fit case where the entire building ought to have been taken as comprehensive one which is put principally to religious and charitable activities. There is no other way of looking. On the totality of the facts and circumstances, any other conclusion would be destructive of the entire factual scenario. We are, therefore, unable to accept the approach adopted under the impugned judgment to point out that 50% of the plinth area of the building has to be exempted. Hence, we are of the view that the decision rendered by the Government through Ext.P4 and that of the learned single Judge affirming it do not stand on the basis of the indisputable facts. The appellant / writ petitioner was entitled to complete exemption for the building in question from the provisions of the KBT Act.

5. In the result, the impugned judgment is set aside, and resultantly, Ext.P4 order impugned in the writ petition is quashed and it is declared that the appellant / writ petitioner is entitled to

exemption from the provisions of the KBT Act for the building in question and no payment of building tax shall be insisted upon or recovered as regards the building in question. This writ appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(ANU SIVARAMAN, JUDGE)

jg-30/9