IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 6TH DAY OF AUGUST 2015/15TH SRAVANA, 1937

WP(C).No. 6278 of 2014 (H)

PETITIONER :

MALABAR MISSIONARY BROTHERS,
(MMB) GENERALATE, MARATHAKKARA P.O., THRISUR DISTRICT,
REPRESENTED BY ITS SUPERIOR GENERAL BNRO.SAVIO OLAKKENGIL.

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

RESPONDENTS :
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1. **STATE OF KERALA**
   REPRESENTED BY ITS SECRETARY,
   REVENUE (SPECIAL CELL) DEPARTMENT,
   THIRUVANANTHAPURAM.

2. **TAHSILDAR**
   TALUK OFFICE, THRISSUR DISTRICT.

3. **THE VILLAGE OFFICER,**
   MARATHAKKARA VILLAGE, THRISSUR DISTRICT.

R1 TO R3 BY GOVERNMENT PLEADER SRI.R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 6278 of 2014 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPIES OF THE CERTIFICATES OF RECOGNITION.

EXHIBIT P2: A TRUE COPY OF THE CERTIFICATE DATED 3.1.1996 ISSUED BY THE COMMISSIONER OF INCOME TAX, COCHIN.

EXHIBIT P3: A TRUE COPY OF THE LETTER DATED 25.8.2005 ISSUED FROM THE OFFICE OF THE ARCHIBISHOP'S HOUSE THRISSUR.

EXHIBIT P4: A TRUE COPY OF THE HEARING NOTICE DATED 8.4.2013.

EXHIBIT P5: A TRUE COPY OF THE PETITION FILED BEFORE THE HON'BLE MINISTER FOR REVENUE DATED 8.6.2013.

EXHIBIT P6: COPY OF THE BALANCE SHEET AS ON 31.3.2011.

EXHIBIT P6(A): COPY OF THE BALANCE SHEET AS ON 31.3.2012.

EXHIBIT P6(B): COPY OF THE BALANCE SHEET AS ON 31.3.2013.

EXHIBIT P7: A TRUE COPY OF THE ORDER DATED 25.1.2014 ISSUED BY THE IST RESPONDENT.

EXHIBIT P8: A TRUE COPY OF THE PROCEEDINGS DATED 10.2.2014 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P9: A TRUE COPY OF THE ORDER OF ASSESSMENT ISSUED ON 7.2.2014 BY THE 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

A. MUHAMED MUSTAQUE, J

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W.P.(C).No. 6278 of 2014

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Dated this the 06th day of August, 2015

JUDGMENT

The petitioner has approached this Court impugning an order passed under Section 3(1)(b) of the Building Tax Act, 1975.

2. The petitioner is a religious congregation claims that they are using the entire building only for the religious purpose. This was rejected by Ext. P7 stating that only a portion of the building would fall within the exemption treating building being used for this purpose. The remaining portion has been rejected as the petitioner failed to prove that have been used for religious or charitable purpose.

3. The petitioner's case is that the entire building is being used for this purpose. The petitioner explains the religious purpose as the adoration, meditation and training leading to seminarian. Therefore, the claim of the petitioner, is that the building is being used as Montessori.

4. The petitioner also relies on the judgment of the Division Bench of this Court **Mother Superior Vs. Government of Kerala [2008(1) KLT 446]** wherein this Court held as follows:

> "If the activities that are going on in the convent are predominantly religious, then, normally, buildings of the convent used for the said purpose should also quality for exemption."

4. It appears that the decision has been taken on a wrong premise. The authority proceeded to consider the only building which is used as prayer hall alone has to be treated as religious purpose. The question is whether other activities which are having a pre-dominant religious character also need to be considered as a religious activity.

5. The case of the petitioner is that the entire building is being used apart from using for prayer hall as Montessori and other religious acitivities. This, according to me, requires a *factual probe* by authority to find out the nature of activity. In the absence of any such findings, it may not be proper for this Court to decide whether the entire building is being used for religious activity.

6. The Government failed to address this issue in its right perspective. It is to be noted for the claim of the petitioner only need be adverted considering the user as a religious institution and not by way of charitable or any other purposes as contemplated under Section 3(1)(b). Therefore,

impugned order is set aside. The Government shall re-consider the matter after issuing a fresh notice to the petitioner and also calling a report from Tahasildar within a period of four months.

The writ petition is disposed of as above.

Sd/-
A. MUHAMED MUSTAQUE, JUDGE

bpr