IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 10638 of 2012 (D)

PETITIONER :

ST. JUDE MISSION HOSPITAL,
THURUTHY P.O, VAZHAPPALLY (W),
REPRESENTED BY SISTER THEJUS FRANCIS,
ADMINISTRATOR.

BY ADV. SRI.A.KUMAR

RESPONDENTS :
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1. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY FOR REVENUE,
   GOVERNMENT SECRETARIAT, TRIVANDRUM 695001.

2. TAHASILDAR (ASSESSING AUTHORITY),
   CHANGANASSERY 686101.

R1& R2 BY SR.GOVERNMENT PLEADER SRI.S.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-09-2015, THE COURT ON 09-09-2015 DELIVERED THE FOLLOWING:

W.P.(C)No.10638/2012

APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1 TRUE COPY OF THE TRUST DEED DATED 10-02-1995.
EXT.P1(a)-TRUE COPY OF THE CERTIFICATE OF REGISTRATION S.No.Q49 OF 1960 DATED 3-5-1960.
EXT.P2 TRUE COPY OF THE RETURN DATED NIL.
EXT.P3 TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 4-12-2008.
EXT.P4 TRUE COPY OF THE SUBMISSION MADE BY THE PETITIONER TO THE 1ST RESPONDENT IN SUPPORT OF ITS CLAIM FOR EXEMPTION DATED 4-11-2011.
EXT.P5 TRUE COPY OF THE ORDER DATED 6-3-2012.
EXT.P6 TRUE COPY OF THE ASSESSMENT ORDER DATED 9-3-2012.

RESPONDENTS' EXHIBITS :- Nil.

True copy

P.A to Judge

ANIL K.NARENDRAN, J.

W.P.(C)No.10638 of 2012

Dated this the 9th day of September, 2015

JUDGMENT

The petitioner in this Writ Petition is St.Jude Mission Hospital administered by St.Joseph's Province of the Assisi Sisters of Mary Immaculate, a congregation stated to have been formed for the service for the sick, poor and afflicted, especially of the leprosy patients. The Congregation is registered under the Travancore-Cochin Literary, Scientific and Charitable Societies' Registration Act XII of 1955. The petitioner has approached this Court in this Writ Petition seeking a writ of certiorari to quash Ext.P5 order passed by the 1st respondent and also Ext.P6 demand notice issued by the 2nd respondent. The petitioner has also sought for various declarations and also a writ of mandamus commanding the 1st respondent to grant exemption under Section 3(1)(b) of the Kerala Building Tax Act for the building covered under Ext.P2 return and forming the subject matter of Ext.P6 assessment order.

2. The issue raised in this Writ Petition is covered against the petitioner by the judgment of a Full Bench of this Court in

Alphonsa Hospital Vs. State of Kerala (2015 (1) KLT 815 (F.B.)). Paragraphs 5 to 7 of the judgment read thus:-

> "**5.** In *S.H.Medical Centre Hospital* (supra), the Hon'ble Supreme Court noted the statutory provision in Section 3 relating to the manner in which 'charitable purpose' is defined and formulated two questions to decide the issue. They read as follows:
>
> > "i. Whether the application of income derived from a building for charitable purpose is sufficient to hold that a building is used 'principally' for 'charitable purpose' as per Section 3(1)(b) of the Act in order to hold it exempt from paying building tax?
> >
> > ii. Whether the Kerala High Court has correctly interpreted the 'Explanation' clause to Section 3(1) in the cases referred (supra) to hold that charitable purpose means solely 'relief of the poor and free medical relief'?"
>
> **6.** Dilating on the aforesaid two questions, the Apex Court concluded that the High Court was correct in holding that the application of income derived from a building for charitable purposes does not amount to the building being 'principally used' for charitable purpose. To examine the meaning of 'charitable purpose', the meaning given to the word 'charitable' in Oxford English Dictionary was noticed as "of or relating to the assistance of those in need". But, it was held that such an interpretation cannot be accepted for the purposes of tax. It was also stated that if medical services were being offered free to a majority of the patients rather than a minority of patients, then the conclusion could have been reached that the buildings are principally used for charitable purposes. Resultantly, it was

held that the High Court has correctly interpreted the 'Explanation1 clause to Section 3(1) of the Act to hold that 'charitable purpose' means 'relief of the poor and free medical relief', it was conclusively held by the Apex Court that only the building utilized for providing free medical aid can be said to be used principally for charitable purpose and it will go against the letter of the law to grant building tax exemption for all the buildings of the hospital irrespective of what it is used for simply on the ground that the overall object of the hospital is charity although it is being predominantly run on a chargeable basis.

7. In the light of the aforesaid precedent, namely, the judgment of the Hon'ble Supreme Court dated 16.1.2014 in Civil Appeal No.665 of 2014, reported as *S.H.Medical Centre Hospital v. State of Kerala* (2014(1) KLT 316 (SC)), the issues covered by the reference to the Full Bench stand answered by the law laid by the Hon'ble Supreme Court of India in the said precedent. The reference is answered accordingly."

In view of the law laid down by the Full Bench of this Court, the petitioner is not entitled for the reliefs prayed for in this Writ Petition. In the result, this Writ Petition fails and the same is dismissed.

No order as to costs.

Sd/-
ANIL K.NARENDRAN, JUDGE

skj