IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 17227 of 2015 (C)

PETITIONER(S):

CHANGANACHERRY SOCIAL SERVICE SOCIETY,
P.B NO.20, ARCHBISHOP'S HOUSE,
CHANGANACHERRY - 686 101,
REPRESENTED BY SECRTARY, FR.JOSEPH KALARICKAL.

BY ADVS.SRI.K.K.CHANDRAN PILLAI (SR.)
SRI.V.V.GEORGEKUTTY
SRI.AJI V.DEV

RESPONDENT(S):
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1. THE TAHSILDAR,
CHANGANACHERRY, PIN - 686 101.

2. THE DEPUTY SECRETARY,
REVENUE (SPECIAL CELL) DEPARTMENT,
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM, PIN - 695 001.

BY GOVERNMENT PLEADER SRI.R.RANJITH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 17227 of 2015 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 TRUE COPY OF THE RELEVANT PORTION OF THE MEMORANDUM OF ASSOCIATION OF CHANGANACHERRY SOCIAL SERVICE SOCIETY

EXHIBIT P2 TRUE COPY OF THE CERTIFICATE OF REGISTRATION OF CHANGANACHERRY SOCIAL SERVICE SOCIETY ISSUED BY THE REGISTRAR OF SOCIETIES OF KOTTAYAM

EXHIBIT P3 TRUE COPY OF THE CERTIFICATE OF REGISTRATION UNDER SECTION 12A(A) GRANTING EXEMPTION FROM INCOME TAX, ISSUED BY THE INCOME TAX DEPARTMENT

EXHIBIT P4 TRUE COPY OF THE ALLOTMENT OF REGISTRATION NUMBER TO RECEIVE FOREIGN CONTRIBUTION, ISSUED BY THE DEPUTY SECRETARY, GOVERNMENT OF INDIA.

EXHIBIT P5 TRUE COPY OF THE CERTIFICATE NO K.DIS.3309/95/C1 DATED 26-04-1995, SHOWING THE PETITIONER AS CHARITABLE INSTITUTION, ISSUED BY THE FIRST RESPONDENT

EXHIBIT P6 TRUE COPY OF THE REVENUE RECOVERY CERTIFICATE

EXHIBIT P7 TRUE COPY OF THE REVISION PETITION DATED 19-06-2014 FILED BEFORE THE GOVERNMENT THROUGH CHIEF WHIP

EXHIBIT P8 TRUE COPY OF THE HEARING NOTE SUBMITTED BEFORE THE 2ND RESPONDENT AT THE TIME OF HEARING ON 23-12-2014

EXHIBIT P9 TRUE COPY OF THE ORDER DATED 13-03-2015 DISMISSING THE REVISION PETITION ISSUED BY THE SECOND RESPONDENT

EXHIBIT P10 TRUE COPY OF THE CONSOLIDATED STATEMENT SHOWING THE FUND UTILIZATION FOR 2010-11 TO 2012-13.

EXHIBIT P10A THE STATEMENT SHOWING THE RECEIPTS AND PAYMENT FOR 2010-11

EXHIBIT P10B THE STATEMENT SHOWING THE RECEIPTS AND PAYMENT FOR 2011-12

EXHIBIT P10C THE STATE SHOWING THE RECEIPTS AND PAYMENT FOR 2012-13

EXHIBIT P11 TRUE COPY OF THE REPORT OF THE 1ST RESPONDENT, DATED 06-01-2015 OBTAINED UNDER RTI ACT.

EXHIBIT P12 TRUE COPY OF THE REVISED ASSESSMENT ORDER AND DEMAND NOTICE ISSUED BY THE 1ST RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No.17227 of 2015

Dated this the 16th day of December, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P9 order of the 2nd respondent, whereby the 2nd respondent rejected a claim for exemption preferred by the petitioner in respect of a building, that was the subject matter of an assessment under the Kerala Building Tax Act, 1975. The grievance of the petitioner against Ext.P9 is essentially that, while passing Ext.P9 order, the 2nd respondent placed reliance on a report dated 06.01.2015 of the 1st respondent and the petitioner was not put to notice of the said report, and his comments were not sought for on the said report, before passing Ext.P9 order. It is stated, therefore, that Ext.P9 order is vitiated by a non-compliance with the rules of natural justice. The petitioner also has a case that in Ext.P9 order the 2nd respondent has not applied the tests that are relevant for determining a claim for exemption under Section 3 of the Kerala Building Tax Act. It is pointed out that, under Section 3, buildings that are used principally for religious, charitable or educational purposes qualify for exemption and hence there must be a finding by the 1st respondent as to whether the building in question qualifies or not for exemption, based on the use to which the building is put. It is pointed out that in Ext.P9, there is no such finding and the 1st respondent has gone merely by the statement of accounts furnished by the petitioner and by the figures showing the extent of expenditure incurred by the petitioner for charitable activities.

2. I have heard the learned Senior Counsel, duly instructed by the learned counsel for the petitioner as also the learned Government Pleader for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that, in Ext.P9 order, the 1st respondent does not give any valid reasons, based on the provisions of Section 3(1)(b) of the Kerala Building Tax Act, as to why the building in question would not qualify for exemption under the Kerala Building Tax Act. In my view, when the use to which the building is put is the criteria for the grant of exemption, then it would incumbent upon the 1st respondent, while considering a claim for exemption made by the petitioner, to look into the extent to which the building is used for the purposes mentioned in Section 3(1)(b) of the Act and then decide whether the building would qualify for exemption. This has apparently not been done in Ext.P9 order. I also find force in the submission of the learned Senior Counsel for the petitioner that, while passing

Ext.P9 order, the 1st respondent relied on a report dated 06.01.2015 of the 1st respondent, which was not shown to the petitioner. The report in question is stated to be with regard to the measurement of the plinth area of the building and there could be a possibility of the petitioner disputing the said measurement shown in the report of the 1st respondent. I am of the view that the 2nd respondent must disclose all the material, on which he proposes to rely on, to the petitioner before considering his claim for exemption on merits. To enable the 2nd respondent to have a fresh look into the matter, I quash Ext.P9 order of the 2nd respondent, and Ext.P12 assessment order and demand notice of the 1st respondent. The 2nd respondent shall pass fresh orders on the claim for exemption preferred by the petitioner, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

The writ petition is disposed as above.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

das /16.12.15