IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 28152 of 2007 (Y)

PETITIONER :

SREE SANKARA SANTHI NILAYAM AND
EDUCATIONAL TRUST, KALADY,
REPRESENTED BY ITS MANAGING TRUSTEE P.VEERARAGHAVAN,
'GURUKRIPA', RAJAJI ROAD, ERNAKULAM, KOCHI-35.

BY ADVS.SRI.V.V.ASOKAN
SMT.S.AMINA

RESPONDENT(S) :
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1. THE TAHASILDAR,
   ALUVA.

2. STATE OF KERALA,
   REPRESENTED BY ITS SECRETARY TO GOVERNMENT
   (REVENUE SPECIAL CELL), SECRETARIAT, THIRUVANANTHAPURAM.

R1 & R2 BY GOVT. PLEADER SRI. R. RANJITH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

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APPENDIX

PETITIONER'S EXHIBITS :

EXT.P1	:	COPY OF TRUST DEED NO. 2/85 DATED 30.11.1984.
EXT.P2		COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNT OF THE PETITIONER TRUST FOR THE YEAR 1995-96 DATED NIL.
EXT.P2(a)		COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNT OF THE PETITIONER TRUST FOR THE YEAR 1996-97 DATED NIL.
EXT.P2(b)		COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNT OF THE PETITIONER TRUST FOR THE YEAR 1997-98 DATED NIL.
EXT.P2(c)		COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNT OF THE PETITIONER TRUST FOR THE YEAR 2003-04 DATED NIL.
EXT.P2(d)		COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNT OF THE PETITIONER TRUST FOR THE YEAR 2004-05 DATED NIL.
EXT.P2(e)		COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNT OF THE PETITIONER TRUST FOR THE YEAR 2005-06 DATED NIL.
EXT.P2(f)		COPY OF THE AUDITED INCOME AND EXPENDITURE ACCOUNT OF THE PETITIONER TRUST FOR THE YEAR 2006-07 DATED NIL.
EXT.P3		COPY OF THE ORDER G.O.(RT) NO. 3468/2007 OF THE 2ND RESPONDENT DATED 14.8.2007.
EXT.P4		COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 30.8.2007.

(Contd...)

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EXT.P5	**COPY OF THE ASSESSMENT ORDER ISSUED BY THE IST RESPONDENT DATED 30.8.2007.**
EXT.P6	**COPY OF THE DEMAND NOTICE ISSUED BY THE RESPONDENT DATED 30.8.2007.**

<u>RESPONDENT'S EXHIBITS : NIL</u>

//TRUE COPY//

P.A. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 28152 of 2007

Dated this the 12th day of August, 2015

JUDGMENT

The petitioner approached this Court challenging rejection of exemption under Building Tax Act. The petitioner's building has been assessed for building tax. The petitioner is a charitable trust, the assessment is in respect of old age home run by the petitioner. Since, the petitioner claimed for exemption, Tahsildar referred the matter to the Government. The Government passed the impugned order.

2. Section 3(1)(b) exempt building used for the principaly for religious, charitable or educational purpose or workshop or from the building tax act. The petitioner constructed the building as an old age home to provide food and shelter belongs to the Brahmin Community.

3. It is seen from the impugned order that the Tahsildar reported that the building is being used for charitable purposes. However, taking note of the fact that in the audit statement forwarded by Tahsildar, the petitioner had received certain contribution from the inmates, exemption was denied.

4. The question is whether the receipt of contribution from the inmates would dis-entitle from the petitioner for claiming exemption.

5. There is hardly any dispute about fact that the activities of the petitioner is a charity. There is no case for the official respondents that an old age home is being run by the petitioner for profit. Normally, the charity understood a service being rendered to the poor without expecting any return or consideration. While taking note of the above fact, it has been noted the predominant purpose of running of old age home is to accommodate old people. It is not necessary that old age persons should belongs to poor strata of the society. There may be inmates belongings to the higher strata of the society or capable to afford a shelter on payment of any contribution. In such situation, the object of running of old age home has to be considered. The principle object of the society is to provide shelter to all inmates without any consideration, necessarily that would fall with the activity of the charity even if some of the wealthy contributes to the petitioner.

6. The Tahsildar or Government has no case that all the inmates are contributing to the society, if some of them have contributed, that should not be understood as the object of the society is to collect the contribution from the inmates. In such

circumstances, it is safe to conclude that the principle activity of the society is the charity and not to run old age home on profit.

7. The learned counsel also placed before me an unreported judgment of this Court in W.P.(C).No.37744/2007 wherein para 11 held as follows :

> "Therefore, if the petitioner is an institution, which is run without any profit motive, the fact that it is accepting some deposit from some of the inmates, which is inadequate to maintain the institution itself, will not render the institution ineligible for the benefit of exemption, in terms of Section 3(1)(b) of the building tax Act. In that view of the matter, I am unable to uphold Ext.P7 Government Order."

Therefore, this Court is also view, taking note of the activity of the petitioner that the building in principle is being used for the old age home without any profit motive, is entitled for exemption. Accordingly, impugned order is quashed and declared that the petitioner is entitled for exemption in terms of Section 3(1)(b) of the Building Tax Act.

The writ petition is disposed of as above.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

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