

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 35532 of 2009 (J)

PETITIONER(S) :

**MUSLIM ASSOCIATION,
REPRESENTED BY ITS SECRETARY,
OFFICE OF THE MUSLIM ASSOCIATION,
NANDAVAN, THIRUVANANTHAPURAM.**

**BY ADVS.SRI.P.A.AHAMMED
SRI.A.ABDUL KHARIM
SRI.M.SREEKUMAR
SRI.THOUFEEK AHAMED**

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.**
- 2. THE DISTRICT COLLECTOR,
KUDAPPANAKUNNU, THIRUVANANTHAPURAM.**
- 3. THE TAHSILDAR,
THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.S.JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE BYE-LAWS OF THE PETITIONER.

EXHIBIT P2: TRUE COPY OF THE ORDER G.O.MS.95/RD/75 DATED 28.01.1975.

EXHIBIT P3: TRUE COPY OF NOTICE NO.B1.16362/02 DATED 02.07.2002.

EXHIBIT P4: TRUE COPY OF THE NOTICE NO.B1/4695/02 DATED 05.03.2005.

EXHIBIT P5: TRUE COPY OF NOTICE NO.B1-16362/02 DATED 02.11.2006.

**EXHIBIT P6: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
O.P.NO.18573/2002 DATED 11.01.2008.**

**EXHIBIT P7: TRUE COPY OF THE RECEIPT DATED 22.03.2008 ISSUED BY
THE 3RD RESPONDENT.**

**EXHIBIT P8: TRUE COPY OF THE REPRESENTATION FILED BY THE PETITIONER
BEFORE THE 2ND RESPONDENT.**

EXHIBIT P9: TRUE COPY OF THE ORDER NO.B1-16362/02 DATED 05.10.2009.

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

K. VINOD CHANDRAN, J.

W.P.C. No.35532 of 2009

Dated this the 25th day of June, 2015.

JUDGMENT

The petitioner is aggrieved with Ext.P9 demand made by the District Collector, an order passed in compliance of the judgment at Ext.P6. The facts leading to the impugned order are that the petitioner had been granted lease of 27 cents of land as per Ext.P2 Government Order. The order specifically states that the lease is granted in favour of the petitioner for a period of 30 years on a concessional lease rent of 1% of the market value, ie. Rs.675 per annum, for constructing a hostel and community hall. It is also provided that the land should not be used for any purposes other than the purpose for which it is leased out.

2. Admittedly, as of now, there is a community hall situated therein with an Industrial Training Centre run in the 2nd floor and the offices of the association as also an educational trust, carried

on in the said premises. The trust is said to be running an Engineering College, which is situated far away. The demand arose on a revision of the lease rent made, which is based on the market value of the property, and that applicable to a commercial lease.

3. The petitioner, in the year 2002, was issued with a demand by Ext.P3, which was reduced as per Ext.P4 and further reduced as per Ext.P5. On the issuance of the first demand in the year 2002 itself, the petitioner had filed a writ petition and obtained stay. The writ petition so filed was disposed of by Ext.P6. The judgment at Ext.P6 found that the petitioner had been granted lease of the land at a concessional lease rent for a specific purpose, ie. for setting up a community hall and a hostel. The revised demand made by the Government, at that point of time was on the premise that the petitioner was commercially exploiting the community hall as a marriage hall. The writ petition filed by the petitioner was disposed of by Ext.P6, directing the petitioner to pay Rs.35 lakhs and the District Collector to consider the matter afresh.

4. The consideration so made produced as Ext.P9 is challenged herein. The petitioner contends that the Government has no authority to revise the lease rent and that the petitioner being a charitable society, involved in uplifting the lot of the members of a minority community, is entitled to be continued at the concessional rate.

5. A reading of Ext.P1 would indicate that at that point of time the lease was granted at a rent of 1% of the market value, for utilising the land for the specific purposes outlined there. The rent, hence, would be liable for revision in accordance with the rise in market value. Ext.P9 also would indicate the rate at which the rent is payable, is as prescribed by the Government, as per the G.O.s issued on that count. By a G.O. Of 1975 the rate fixed was 10% of the market value for non-commercial purposes and 20% for commercial purposes by a G.O. Of 1995. The rates were again revised in 2004, by a G.O. with the rate ranging between 2% to 10%. Hence the Government is entitled to revise the rent and there is nothing in Ext.P1 to find that the rent fixed is not revisable at all.

6. The next contention is with respect to the utilisation of the land. While considering the issue at Ext.P9, the District Collector had called for a report from the Tahsildar. The Tahsildar reported that, there is a three-storied building called 'Muslim Association Hall' situated in the leased land. The ground floor and the first floor of the building are said to be rented out for various functions like marriage etc. by collecting rent. An Industrial Training Centre is also run on the second floor. In such circumstances, the District Collector found that the building is commercially exploited and hence the petitioner is not entitled to the concessional rate of lease rent. It was also found that the building was not used for any charitable purpose.

7. At the outset, it is to be noticed that in Ext.P1, the grant of lease is on a concessional rate not to facilitate a charitable activity. The association was granted lease only for constructing a community hall and hostel. It is an admitted fact that a community hall had been constructed in three floors and that the ground and second floors are let out for marriages and other ceremonies. The said fact is admitted in the writ petition. The

contention is that the letting out was only to the members of the association, that too, at a concessional rate. That does not deviate from the fact that the property was being commercially exploited. The Industrial Training Centre also is said to be run on the first floor, by granting 25% fee concession with the purpose of giving more educational opportunities to the minority community.

8. As is noticed earlier, the petitioner cannot claim concessional rate, merely on the contention that the petitioner is carrying on charitable activities. The lease rent was specified at a concessional rate of the market value in Ext.P1 only for utilising the land to establish a community hall and hostel in the premises to be used by the members of the community. The petitioner, admittedly is renting out the building for marriage and other ceremonies and conducting an ITC, where students are enrolled on payment of specified fees. There is clear admission that the petitioner has commercially exploited the premises. The receipt of fees and rent at concessional rate, is an unsubstantiated assertion, which in any event does not at all detract from the fact

that, the petitioner is utilising the building for commercial activity. The petitioner also admits to be running the office of the educational trust, which carries on an Engineering College, another commercial venture.

Taking all the circumstances into consideration this Court is not inclined to interfere with Ext.P9 order. The writ petition would stand dismissed. No costs.

Sd/-

K. VINOD CHANDRAN, JUDGE

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