IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 5TH DAY OF JULY 2016/14TH ASHADHA, 1938

W.A.No.1302 of 2016 IN WP(C)6965/2014
AGAINST THE JUDGMENT IN WP(C) 6965/2014 of HIGH COURT OF KERALA DATED 31-05-2016

APPELLANT/PETITIONER:

QUILON MEDICAL TRUST (REG.NO.221/03)
MEDICITY, UMAYANALLOOR, KOLLAM-691 589,
REP. BY MANAGER - LEGAL SRI NIZAMUDDIN A.

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF REVENUE (SPECIAL CELL),
GOVERNMENT OF KERALA,
THIRUVANANTHAPURAM, PIN 695 001.

2. TAHSILDAR
TALUK OFFICE, KOLLAM, PIN 691 013,
(ASSESSING AUTHORITY APPOINTED UNDER S.4(1)
OF THE KERALA BUILDING TAX ACT, 1975).

R BY GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05-07-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & DAMA SESHADRI NAIDU, JJ.

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Writ Appeal No.1302 of 2016

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Dated this the 5th day of July, 2016

JUDGMENT

Antony Dominic, J.

This appeal is filed by the petitioner in W.P.(C)No.6965/14. The writ petition was filed challenging Ext.P8, an order passed by the Government declining to grant exemption from payment of building tax due under the Building Tax Act, 1975 in respect of buildings - such as hospital, canteen, incinerator and the mortuary, apart from the doctors quarters. By the judgment under appeal, relying on the Full Bench judgment of this court in *Unity Hospital (P) Ltd. v. State of Kerala [2011 (1) KLT 236]* and the Division Bench judgment in *Jubilee Mission Medical College and Research Institute v. Government of Kerala [2011 (4) KLT 106]*, this court dismissed the writ petition. It is aggrieved by this judgment, this appeal is filed.

2. We heard the counsel for the appellant and the learned Government Pleader appearing for the respondents.

3. The short question that is raised is whether in respect of the aforesaid buildings, the appellant is entitled to exemption under Section 3 of the Building Tax Act or not. Section 3(1)(b), provides that nothing in the Act shall apply to buildings used principally for religious, charitable or educational purposes or as factories or workshops. Explanation to the Section provides that for the purposes of this sub-section, “charitable purpose” includes relief of the poor and free medical relief. In the judgment in *Unity Hospital (P) Limited (supra),* a Full Bench of this court held that hostel attached to nursing schools and other medical institutions which require compulsory hostel facility for students for their approval are entitled to exemption. Insofar as the hospitals are concerned, the Full Bench held that hospital buildings will get exemption under the head 'charity' only if free medical service is rendered in such buildings. This provision was again clarified by a Division Bench in the *Jubilee Mission Medical College (supra)* where

the Division Bench held thus:

> *"3. Counsel for the appellant raised an alternate contention that under the Medical Council Regulation in order to get approval from the Medical Council for starting Medical College, the college should have a hospital attached to it with the prescribed number of inpatient capacity. So much so, the contention raised by counsel is that the hospital attached to Medical College should also be treated as a building used for educational purpose. According to counsel, going by the very same reason applied by the Full Bench in the above referred decision granting exemption to hostel buildings where students are given accommodation on charitable basis, the hospital building attached to the Medical College should also be granted exemption as it also caters to the educational needs of the medical students. Government Pleader opposed the claim of the appellant by contending the practical training to medical students is only an incidental activity in the hospital where the essential activity is rendering service. According to Government Pleader, hospital building is granted exemption under the Act only when medical relief is rendered free of cost. We are unable to accept he contention of counsel for the appellant because exemption to a building has to be considered with reference to the principal use of the building. Unless the building is principally used for the purpose for which exemption is provided, building tax exemption is not available. No one can dispute that the principal use of the hospital building is for rendering medical aid to patients, no matter in the course of the same medical*

> *students attached as apprentices with the doctors treating the patients get trained. Therefore, the principal use of the hospital building being rendering medical relief to the patients, the category under which exemption has to be considered even to the hospital building attached to Medical College is charitable purpose. The Full Bench has explained in the judgment above referred that medical relief constitutes charity within the meaning contained in Explanation to S.3(1)(b) only when it is rendered free of cost. So much so, in our view, exemption from building tax can be granted to a hospital building only when medical relief is granted in the hospital free of cost. Admittedly the appellant's hospital is not rendering free medical relief to the patients treated in the hospital. So much so, exemption was rightly declined by the statutory authorities and upheld by the learned Single Judge. We, therefore dismiss the writ appeal on this basis. In the result, writ appeal is allowed in part by modifying the judgment of the learned Single Judge to the extent stated above."*

4. Therefore, hospital attached to a medical college as in the case of the appellant would qualify for exemption only if, it satisfies the aforesaid requirements of Section 3(b). The fact that the hospital is attached to a medical college would not improve the case unless those requirements are satisfied. Insofar as this case is

concerned, the appellant has no case that medical service is rendered free in the hospital. Therefore, this case is fully covered against the judgment in *Jubilee Mission Medical College's case (supra)*. Therefore, we do not find any illegality in the conclusions of the learned Single Judge justifying interference.

Appeal fails and is dismissed accordingly.

SD/-
ANTONY DOMINIC
JUDGE

SD/-
DAMA SESHADRI NAIDU
JUDGE

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