

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 10TH DAY OF JANUARY 2017/20TH POUSHA, 1938

WA.No. 707 of 2015

JUDGMENT DATED 10-02-2015 IN WP(C) 32006/2014

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APPELLANT(S)/PETITIONERS:

1. THE CLARIST MEDICAL TRUST OF THE S.H. PROVINCE,
ERNAKULAM, SANJOE HOSPITAL, PERUMBAVOOR - 683 542,
REPRESENTED BY ITS DIRECTOR SR.ANICE VALLIPPALM.
2. THE ADMINISTRATOR,
SANJOE HOSPITAL, PERUMBAVOOR - 683 542.

BY ADVS.SRI.V.M.KURIAN
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.ISAC T.PAUL

RESPONDENT(S)/RESPONDENTS:

1. THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. THE TAHSILDAR,
KUNNATHUNAD TALUK, PERUMBAVOOR - 683 542.

BY SENIOR GOVERNMENT PLEADER SRI.MOHAMMED RAFEEQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 10-01-2017,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

“CR”

**THOTTATHIL B. RADHAKRISHNAN &
DEVAN RAMACHANDRAN, JJ.**

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Dated this the 10th day of January, 2017

JUDGMENT

Devan Ramachandran, J.

In all its hues, chroma, variations and countenance, the claim for exemption from payment of building tax under the Kerala Building Tax Act, 1975 (for short, 'the Act') is embedded on one provision, namely, section 3(1) therein. Since all such exemptions has its hypostatis pinned on this provision, a reading of the same becomes necessary in order to travel into the ambit and bounds of the power and the same is, therefore, extracted as under:

“3. Exemptions – (1) Nothing in this Act shall apply to -

(a) buildings owned by the Government of Kerala or the Government of India or any local authority; and

(b) buildings used principally for religious, charitable or educational purposes or as factories or workshops [or cattle/pig/poultry farms or poly houses].

Explanation I – For the purposes of this sub-section, “charitable purpose” includes relief of the poor and free medical relief.”

2. It is ineluctable from even an exfacie reading of the Section that exemption can be claimed and granted under its mandate only to buildings that are used principally for the purposes itemized therein. Discernibly, the principal use of a building for educational purpose would confer it worthy of such exemption. The question here is, if an education institution imparting teaching in Nursing gets itself attached or affiliated to a hospital for its clinical requirements would then obtain itself to be viewed as being used principally for educational purposes. The affirmative assertion to the questions is the contentions of the appellant in this appeal.

3. This appeal has been preferred by the appellants against the judgment of the learned single Judge dismissing the writ petition thereby repelling their claim for exemption, on grounds afore-indicated, from payment of building tax for a hospital being run by them.

4. We have heard Sri.V.M.Kurian, assisted by Sri.Isac.T.Paul, the learned counsel for the appellants and the learned Government Pleader appearing for the respondents.

5. The appellants claim that they are running a College of Nursing as also a School of Nursing offering educational courses leading to the degree of B.Sc.Nursing and M.Sc.Nursing and that as is imperatively necessitated under

the Regulations issued by the Nursing Council of India, they have to have a 120-150 bedded parent/affiliated hospital for each programme as an essential clinical facility. They assert that they are thus obligated to run a hospital by name Sanjoe Hospital which they maintain is the parent hospital as required under the Regulations and that since the said hospital provides clinical facilities to the College of Nursing and the School of Nursing run by them, they are entitled to exemption from payment of building tax for the hospital building. This claim is obviously underpinned on the postulation that the said hospital has been set up essentially for educational purposes.

6. The College of Nursing and the School of Nursing run by the appellants have been admittedly exempted from payment of building tax under the provisions of the Act. However, in the case of the hospital, such exemption was denied by the Government and as a consequence, the Tahsildar, being the assessing authority, issued an order assessing the hospital building to tax under the Act. The writ petition was filed by the appellants challenging the orders of the Government denying exemption and that of the Tahsildar assessing the hospital to tax. These orders were produced in the writ petition as Exts.P9 and P10 respectively.

7. The learned single Judge, however, dismissed the writ petition holding that the appellants are not entitled to the prayers made therein since the issue, as to whether a hospital that is attached to a Medical College is entitled to claim exemption from the charge of tax under the Act, has already been answered to the contrary by a Division Bench of this Court in the decision reported in **Jubilee Mission Medical College and Research Institute v. Government of Kerala and others** [2011 (4) KLT 106]. Obviously, since the law that has been declared is that even a hospital, to which a Medical College is attached can claim no exemption from payment of building tax under the theorization that it is an educational institution, a hospital to which a College of Nursing or a School of Nursing is affiliated, would fare no better and can make no greater claim. The learned single Judge also referred to the judgment of the Honourable Supreme Court in **S.H.Medical Centre Hospital v. State of Kerala** [2014 (1) KLT 316 (SC)] which is an authority for the proposition that a hospital attached to a Medical College can be treated as a building used for educational purposes only when the medical relief offered in the said hospital is free of cost. The learned single Judge, noticing these judgments,

dismissed the writ petition and the appellants have now chosen to impugn that judgment in this appeal.

8. From the pleadings on record and the submissions at the Bar, we see that the appellants are running a College and a School of Nursing by name Sanjoe School of Nursing and Sanjoe College of Nursing with an annual intake of 56 students in both B.Sc. Nursing and M.Sc. Nursing courses. They avouch and insist that the hospital run by them, namely, Sanjoe Hospital is a parent hospital for the College and School of Nursing and that it being an integral part of it, ought to be deemed as an educational institution, thus, deserving exemption from payment of building tax. It is vehemently contended by the learned counsel for the appellants that the principal use of the hospital building, being the parent/affiliated hospital of the School and College of Nursing is for educational purposes and thus authorised to exemption. He says that the claim of the hospital for exemption from building tax has its foundational brass-tacks on the fact that the School and College of Nursing cannot exist without a parent/affiliate hospital and since the hospital is a necessary and unexpendable adjunct to the educational institutions, the same should also be treated as part of it thus being entitled to exemption under the Act. He pointedly refers to the

Regulations of the Indian Nursing Council and says that the school and college of nursing is constitutively mandated to have a hospital with a particular intake so as to enable the college to function and that for such reason, the hospital also cannot have an existence apart from the Nursing School and College.

9. We see that these submissions have its predication in Regulation No.21 of Ext.P8 Regulations issued by the Indian Nursing Council. We see that what is stated therein is that a School of Nursing should have a parent/affiliated hospital with a particular annual intake as an essential clinical facility for the college. However, it does not say in any manner that every Nursing College or School of Nursing should have a hospital attached to it as an adjunct institution. What is meant by this Regulation is that the School or College of Nursing should be affiliated to a hospital which could be part of the same management or of a separate management. If the hospital belongs to the same management, obviously, it could fall within the meaning of the word 'parent hospital' shown therein or otherwise, it would then be taken as an affiliated hospital. What is required, therefore, is only that the College or School of Nursing should have an affiliation with a hospital, answering the infrastructural requirements prescribed in the

Regulations, so as to provide clinical facilities to the students. This does not, however, in any manner go to mean that every School or College of Nursing should have a hospital working as a part of it. We are, therefore, unable to countenance the submissions made by the learned counsel for the appellants.

10. We would assume that if at all a claim is laid out that a hospital exists only for the purpose of a College or School of Nursing, it would then have to be made manifest by theasserter that the hospital caters solely to the purposes of students of such School or College and that all the profits and earnings from such hospital is being used solely for the purposes of the School or College Nursing, perhaps even to subsidise the eduction of the students. If this had been so, then it could have been possibly maintained by the appellants that they are not running the hospital for profit and that they are, therefore, entitled to exemption in conformity with the judgment of the Honourable Supreme Court in **S.H.Medical Centre Hospital** (supra). Perhaps, if the appellants had a case that even though the hospital does not offer medical relief free of cost but that all the amounts or at least all the profits received from the hospital are put to use for the educational institutions, then we would suspect that they

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could have possibly gained a better footing to claim exemption. In any event of the matter, the case of the appellants is quite to the contrary. They admit that the hospital does not offer free medical relief nor that it is meant only for the purpose of the School and College of Nursing. They do not admit in any manner that all the profits from the hospital are used for the educational institutions or that the hospital is being run solely for the purposes of the educational institutions. If that be so, obviously, this is a case where issues raised by the appellants are squarely covered by the precedents mentioned above.

In such event of the matter, we are in full concurrence with the judgment of the learned single Judge and see no reason to deviate from it in any manner whatsoever. We, therefore, dismiss this writ appeal.

**Sd/- THOTTATHIL B. RADHAKRISHNAN
JUDGE**

**Sd/- DEVAN RAMACHANDRAN
JUDGE**

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P.A to Judge.