

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 29<sup>TH</sup> DAY OF JULY 2022 / 7<sup>TH</sup> SRAVANA, 1944

WP(C) NO. 10147 OF 2014

PETITIONER:

PANAYAPPILLY SREE NARAYANA GURUSWAMI TRUST  
REG NO 402, C/O.M.K RAGHAVAN MEMORIAL SREE NARAYANA  
HALL, STATUE ROAD, CHULLIKAL, KOCHI - 5 PIN 680 005,  
REP BY ITS EXECUTIVE TRUSTEE SRI P.V PRATHAPAN  
BY ADV SRI.SAJAN MANNALI

RESPONDENTS:

- 1 THE CORPORATION OF KOCHI  
C/O.OFFICE OF THE CORPORATION OF KOCHI, NEAR BOAT  
JETTY, ERNAKULAM, REPD. BY ITS SECRETARY PIN - 682 001
- 2 SECRETARY  
CORPORATION OF KOCHI, C/O.OFFICE OF THE CORPORATION OF  
KOCHI, NEAR BOAT JETTY, ERNAKULAM PIN - 682 001
- 3 REVENUE OFFICER  
CORPORATION OF KOCHI, ZONAL OFFICE, MATTANCHERRY  
PIN - 682 002  
BY ADV.  
R1 TO R3 BY D.G.VIPIN, STANDING COUNSEL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
29.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**CR****JUDGMENT****Dated this the 29<sup>th</sup> day of July, 2022**

Petitioner is a trust, having registration No.402, allegedly registered with the office of the Sub Registry, Ernakulam. The said trust is the owner of buildings bearing Nos.CC 14/143A, 14/143B (U/A) & 14/143C (U/A) within the limits of the Corporation of Kochi – the 1<sup>st</sup> respondent. Admittedly two of the buildings specified above are unauthorised constructions and that's why the buildings are numbered as 'UA' in accordance with the requirement under Section 242 of the Kerala Municipality Act 1994. According to the petitioner, among the said buildings, building bearing No.CC 14/143A was given exemption from the payment of property tax by the Corporation of Kochi from 24.8.1990 onwards. The case projected by the petitioner is that the trust is working for the betterment of the lower strata of the society and it was taking into account the said aspect that exemption from payment of property tax to the building was given to the trust.

2. While so, a complaint was filed by one Prabhakaran before the Regional Joint Director of Municipalities, Kochi against the property tax exemption granted to the building of the petitioner trust. It is the contention of the petitioner that the said person approached the petitioner trust and sought for Rs.1,50,000/- to

compromise the said matter and when the petitioner refused to budge to the demand made by the said person, he filed the complaint before the authority. Thereafter, a letter was received by the petitioner from the Corporation of Kochi informing that the exemption granted to the buildings of the trust is proposed to be cancelled. Thereupon, the trust filed a petition before the Corporation requesting to review the order cancelling exemption granted to the trust.

3. It is also pointed out that thereafter, the Finance Standing Committee of the Corporation held its meeting on 23.9.2010 and considered the request for reviewing the order cancelling the property tax exemption of petitioner's buildings. It is submitted that the Standing Committee decided to continue the property tax exemption and the said decision was communicated to the petitioner's office bearers then and there and thereafter, the property tax exemption continued upto 24.8.2011. However, as per a letter dated 24.8.2011, it was informed that the review petition filed by the petitioner trust before the Finance Standing Committee is rejected and it was decided not to give property tax exemption to the buildings of the petitioner and directed to pay the property tax for the buildings from 1.4.1990.

4. According to the petitioner, thereafter, a copy of the order was secured under the Right to Information Act and found that the order of the Finance Standing Committee was falsely corrected by some interested parties/Corporation

employees making it appear that no decision was taken in the said meeting held on 23.9.2010 so as to make it appear that the matter was adjourned to another day. Other allegations are made with respect to the agenda prepared in the Standing Committee Meeting, etc.

5. Anyhow, it is submitted that , pointing about the above said alleged illegal aspects, petitioner had filed a petition before the Corporation of Kochi to consider the above facts and take a decision, which is produced as Exhibit P1, however, no action was taken and being aggrieved, petitioner has filed W.P.(C) No.15551/2012 and secured Exhibit P2 judgment, whereby a direction was issued to the Corporation of Kochi to consider the representation and take a decision.

6. The case projected by the petitioner is that thereafter, petitioner has received a demand notice from the Corporation of Kochi requiring the petitioner to pay the property tax of the building bearing No.14/143A for an amount of Rs.4,55,015/- for the period 1990-1991 to 2013-2014. Yet two other demand notices were received for building No.14/143B (U/A) for the period 2013-2014 and building bearing No.14/143C (U/A) for the period 2007-2008 to 2013-2014 and they have been produced as Exhibits P3 to P5 respectively. It is thus challenging the demand notices, this writ petition is filed.

7. The paramount contention advanced is that the demand notices cannot be sustained under law, in view of the fact that the petitioner was granted exemption

from payment of property tax as is contemplated under section 235 of the Kerala Municipality Act, 1994. It is also submitted that the demands raised cannot be sustained in view of the fact that they are violative of the principles of natural justice since no opportunity was provided to the petitioner before a decision was taken. Other contentions are also raised.

8. The Corporation of Kochi has filed a detailed statement contending that the Corporation had conducted an inspection on the basis of a complaint received by it and found that the building was used as a hall and receiving rent. It was accordingly, that the tax exemption granted to the said building was cancelled; that the subject issue was considered by the Finance Standing Committee and it was decided not to grant tax exemption to the petitioner's buildings. It was accordingly that the order dated 24.8.2011 had been issued by the Corporation Council .

9. It is further submitted that in compliance with Exhibit P2 judgment, the disputes raised by the petitioner was considered by the Finance Standing Committee as item No.2 in the meeting held on 28.11.2012 and a Revenue Officer was deputed to file a detailed report on the said issue. The Revenue Officer also reported that the building was given on rent and it was after realising the said situation that the Committee had made a recommendation to the Corporation Council on 9.1.2013; and thereafter decision No.48 was taken by the Corporation Council in its meeting held on 11 02. 2013 . It is also submitted that the petitioner

had made illegal constructions in front of the existing building bearing Door No.14/143A and those buildings were also being given on rent. Thereupon, those buildings were numbered as 14/143B(U/A) and 14/143C(U/A) and the property tax was assessed at Rs.5,225/- and Rs.767/- respectively, to those buildings w.e.f.1.4.2007 and demand notices were also issued to the petitioner with respect to the same. However, the petitioner failed to pay the property tax in spite of receipt of the demand.

10. Anyhow, later, the petitioner paid the property tax with respect to building bearing Door No.14/143B (U/A) from 1.4.2007 till 30.9.2007. It is also submitted that when unauthorised constructions are made, the owner of the building is liable to pay tax as prescribed under section 242 of Act, 1994 i.e., normal property tax plus twice the amount of tax since the building is constructed illegally, till such time the unauthorised construction is removed or regularised in accordance with law.

11. Petitioner has filed a reply affidavit refuting the allegations raised by the Corporation of Kochi and reiterating the stand adopted in the writ petition . Whatever that be , it is submitted as follows at paragraph 9:

*"9. It may also be noted that though the auditorium functioning under the Petitioner Trust is given on rent, even the very said rent is used purely for charitable purposes alone. Thus the Petitioner Trust is meeting the educational expenses of atleast 5 students who are in abject poverty. Further pension is provided for about 10 senior citizens for the last number*

*of years by the Petitioner Trust, and which pension to senior citizens is continuing even now. Further relating to very poor people, who take the said auditorium of the Petitioner Trust on rent, not a single paisa is taken as rent from them for their marriage functions etc."*

12. I have heard, learned counsel for the petitioner Sri.Sajan Mannali, learned Standing Counsel for Corporation of Kochi Sri.D.G.Vipin and perused the pleadings and materials on record.

13. The sole question emerging for consideration is whether the petitioner is entitled to get property tax exemption under Section 235 of Act 1994, if the building in question is given on rent and the rent received is utilised for charity purposes ? The issue is guided by section 235 of the Kerala Municipality Act, 1994, which reads thus:

*"235. **Exemption from property tax, service cess etc.**- The following buildings and lands shall be exempted from the property tax as may be levied under section 233 and service cess as may be levied under sub-section (4) of section 230, namely:*

*(a) buildings set apart for public worship and actually so used or used for incidental purposes, religious study centres;*

*(b) buildings exclusively used for educational purposes or allied purposes under the ownership of educational institutions owned by the Government, aided or functioning with the financial assistance of the Government and the hostel buildings wherein the students of the said institutions reside;*

*([ba]) buildings exclusively used for educational purposes and upto the*

*level of Higher Secondary under the ownership of educational institutions having recognition of the Government and hostel buildings in which the students of such institutions reside];*

*(c) hospitals providing treatment to patients at free of cost;*

*(d) buildings which are providing shelter to destitutes, or orphans or physically or mentally challenged persons or persons suffering from fatal diseases or animal, using for charitable purposes and admitting all classes of people;*

*(e) libraries, reading rooms and play grounds open to public;*

*(f) ancient monuments protected under the law relating to the preservation of ancient monuments for the time being in force, or part thereof as are not used as residential houses or as public offices;*

*(g) burial and burning grounds;*

*(h) buildings owned by any Local Self Government Institution and the building attached to the institutions handed over to Local Self Government Institutions by the Government;*

*(i) buildings, if the owner thereof belongs to below poverty line and used as his own dwelling house and having a plinth area of less than thirty square meter.*

*(j) residential buildings constructed and given free of cost by Government or Quasi Government institutions or Local Self Government institutions as part of welfare activities.*

***Explanation.-*** *The exemption granted under this section shall not extend to buildings for which rent is realised by the owners and to residential houses not being hostels attached to educational institutions and to residential houses attached to libraries.]*

14. Therefore, it can be seen that exemption can only be granted to those buildings which are utilised for the purposes mentioned, under section 235 of Act,



1994. To put it otherwise, no other buildings are entitled to get exemption from payment of property tax. That apart, the explanation to section 235 extracted above, clearly specifies that the exemption granted under this section shall not extend to buildings for which rent is realised by the owners and to residential houses not being hostels attached to educational institutions and to residential houses attached to libraries.

15. Paragraph 9 of the reply affidavit extracted above, makes it clear that petitioner is realising rent from the buildings in question but it is stated that the entire amount is utilised for charity purposes. In my considered opinion, first of all the building of the trust is not entitled to get exemption since it will not come under any of the categories mentioned under section 235 of the Act, 1994. This I say also because nowhere in the writ petition, petitioner has a case that the building as such is used for charitable purposes. Moreover, when it is admitted that rent is received for the building which alone is being utilised for charity purpose, it is specific and clear that the building is not entitled to get any exemption, even assuming that the building is given free of rent to some, as stated in the reply affidavit. It is significant to note that what is exempted under section 235 of Act, 1994 is the building and not the rent received to the building, which is allegedly used for charitable purposes. Which thus means merely because a trust is the owner of the building, that by itself is not an enabling circumstance for the trust to

secure exemption from property tax under section 235 of the Act, 1994, even if it is undertaking charity work from the income generated from the building or buildings owned by it.

16. This question was considered by a learned single Judge of this Court in **S.N.V.Sadanam Trust v. Corporation of Kochi** [(2006(3), KLT 663] and held that exemption from property tax in respect of the building is subject to restrictions and limitations and the criteria is whether there is collection of rent or not; a very important aspect is that exemption is with respect to the nature of purpose to which the building is put and in other words, the building owned by charitable institutions are not entitled to exemption even if the entire income from the buildings is used for charitable purposes as understood under the Income Tax Act; and only such of the buildings, which are used for the purposes referred to in various sub-sections to section 235 only, are entitled to exemption.

17. Above all these aspects, petitioner has produced not even a single document to establish before this Court that the building is used for any of the purposes mentioned under section 235 of Act, 1994. I would also like to observe that grant of exemption from the payment of property tax is not an empty formality; but on the other hand such an exemption can be granted only on the owner of the building establishing before the authority that the building is used completely for charitable or such other purposes in contemplation of law prescribed

under the Act 1994. Therefore, I have no hesitation to say that even if any exemption was granted to the building, that will not detain the Corporation from cancelling the same if the truth otherwise is detected. To top up the other adverse factors, petitioner has also not produced any order to show that exemption was ever granted to the building. That being the situation, I do not think the petitioner is entitled to get the benefits of section 235 of Act, 1994. It is also evident and clear that by virtue of the directions issued by this Court in Exhibit P2 judgement, the subject matter was considered by the Corporation after securing a report from the Standing Committee and the Revenue Officer of the Corporation.

Upshot of the above factual and legal deliberation is that the petitioner has not made out a case for exercising the power of judicial review conferred under article 226 of the Constitution of India there being no arbitrariness or illegality on the part of the respondent corporation in raising the demands as per the notices impugned.

Needless to say, the writ petition fails and accordingly it is dismissed.

Sd/-

**SHAJI P.CHALY**

**JUDGE**

smv

APPENDIX OF WP(C) 10147/2014

PETITIONER'S EXHIBITS

EXHIBIT P1 A TRUE COPY OF THE PETITION FILED BY THE PETITIONER BEFORE THE SECRETARY, CORPORATION OF KOCHI, DATED 22-12-2011, MARKED AS EXT.P1

EXHIBIT P2 A TRUE COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN WPC 1551/2012, DATED 19/09/2012, MARKED AS EXT.P2

EXHIBIT P3 A TRUE COPY OF THE DEMAND NOTICE, DATED 10-03-2014 FROM THE 2ND RESPONDENT REQUIRING THE PETITIONER TO PAY PROPERTY TAX FOR BUILDING NO 14/43A TO PAY AN AMOUNT OF RS.4,55,015/- MARKED AS EXT.P3

EXHIBIT P4 A TRUE COPY OF THE DEMAND NOTICE, DATED 10-03-2014, FROM THE 2ND RESPONDENT REQUIRING THE PETITIONER TO PAY RS. 5493/- BEING PROPERTY TAX RELATING TO BUILDING NO 14/143B(U/A) MARKED AS EXT.P4

EXHIBIT P5 A TRUE COPY OF THE DEMAND NOTICE FROM THE 2ND RESPONDENT DATED 10-03-2014 OF THE CORPORATION OF KOCHI DIRECTING THE PETITIONER TO PAY RS. 10,5,337/- AS PROPERTY TAX RELATING TO BUILDING NO 143C(U/A) MARKED AS EXT.P5

Exhibit P6

A TRUE COPY OF THE SAID REPLY GIVEN BY CORPORATION OF KOCHI ASST. REVENUE OFFICER UNDER THE RIGHT TO INFORMATION ACT, BEARING INFORMATION NO.WZG2/1120/13 DATED 21/03/2013.