
(2012) 6 ADJ 51 : (2012) 4 AWC 3501

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 2996 of 2002

RT. Rev. A.R. Stephen,
Bishop of Lucknow

APPELLANT

Vs

Nagar Nigam,
Allahabad and Another

RESPONDENT

Date of Decision: April 3, 2012

Acts Referred:

- Uttar Pradesh Municipal Corporation Act, 1959 - Section 174(a), 177, 177(b), 177(c)

Citation: (2012) 6 ADJ 51 : (2012) 4 AWC 3501

Hon'ble Judges: Sunil Ambwani, J; Pankaj Naqvi, J

Bench: Division Bench

Advocate: A.D. Saunders, for the Appellant; Q.H. Siddiqui, for the Respondent

Final Decision: Allowed

Judgement

1. We have heard Shri A.D. Saunders, learned counsel for the petitioner. Learned Standing Counsel appears for the State respondents. Shri Q.H. Siddiqui has filed appearance on behalf of Nagar Nigam and has also filed counter-affidavit. This matter is on the list for several months. He has not appeared on any of the dates and thus we are proceeding to hear the matter on the basis of the counter-affidavit filed by Nagar Nigam, Allahabad. Rt. Rev. A.R. Stephan, Bishop of Lucknow, Church of North India, Bishop House, Allahabad has filed this writ petition against the Nagar Nigam, Allahabad and the Tax Superintendent, Nagar Nigam, Allahabad against the levy and assessment of tax on the "Holy Trinity School", Knox Memorial Hall, 16/2, Church Lane, Allahabad.

2. Brief facts giving rise of this writ petition are that there is Holy Trinity Church at 16/2, Church Lane, Allahabad. There is also a hall known as "Knox Memorial Hall", which is used for charitable purposes. A school building has been constructed in the same campus in which a school in the name of "Holy Trinity School" is being run. The school is an annexe of Boys High School and College, Allahabad. The school is not aided by the

Government. It is alleged that the school is being run by the charitable society for charitable purposes dealing in the field of education. The school also has church functions particularly in the month of December every year, in which the students of the school participate. The Nagar Nigam, Allahabad is assessing the house tax on "Knox Memorial Hall" 16/2 Church Lane, regularly. It appears that the petitioner was paying the house tax at the rate of Rs. 386.40. The annual value of the building of the school was assessed for the first time and on which the house tax was assessed w.e.f. 1.10.1997 to 31.3.2003 giving rise to this writ petition.

3. The Nagar Nigam has assessed the house tax on "Knox Memorial Hall" 16/2 Church Lane, Allahabad on the annual value of the building at Rs. 21,37,800/- on which house tax was worked out at Rs. 4,70,316/-. A bill for payment of current house tax and the arrears of Rs. 19,56,087/- was sent to the petitioner to be paid by 30.9.2002.

4. By an interim order dated 11.12.2002, the recovery of the bill was stayed by the Court. The order is quoted as below :

Sri QS Siddqui may counter-affidavit within three weeks. List thereafter.

Section 177 of U.P. Municipal Corporation Act, 1959 exempted Schools and colleges from house tax. By the amended U.P. Municipal (Amendment) Act (1999), U.P. Act No. 17 of 1999, Schools and colleges are still exempted except for professional, vocational, technical and medical institutions, which are not run and managed by the Government. Hence prima face the levy of the impugned house tax appears to be illegal in view of section 177 of the Act as amended. We, therefore, stay the operations of the bill dated NIL, Annexure-3 to the writ petition till further order.

The counter-affidavit of Shri S.L. Yadav, Legal Advisor, Nagar Nigam, Allahabad has been filed stating in para 4, 6, 8 and 10 as follows :

4. That the contents of para 2 of the writ petition are denied as stated and it is further submitted that in the records of Nagar Nigam the building No. 16/2 Church Lane is recorded in the name of Knox Memorial and in which a School namely Holy Trinity is also running alongwith the Church and School is running in the entire building except the portion of Church. It is further submitted that in accordance to the Section 174 (a) of U.P. Municipal Corporation Act, 1959 the value of building is Rs. 3,44,02,352/- and after assessing at the rate of 7% the value comes to Rs. 21,37,800/- with effect from 1.10.1997, and in accordance to the provision of the Act the Church has been exempted while assessing the tax.

6. That the contents of para 4 of the writ petition are denied as stated and in reply it is further submitted that the Holy Trinity School which is a Branch/Annexee of Boys High School is imparting education, with fee and also the aforesaid institution is not being managed by the State Government.

8. That the contents of para 6 of the writ petition are denied as stated and it is further submitted that the Secretary/Govt. issued a G.O. No. 1674/Naw-9-98 dated 22.7.1998 by which exemption has been granted to certain institution namely Govt. Colleges, Govt. Degree Colleges and College and degree colleges of Handicapped/Deaf & Dumb/unsound mind and also the colleges and degree colleges who are not charging fee of Rs. 50/- per month. But the petitioner has failed to produce any document which may show that the condition stated in the G.O. dated 22.7.98 is applicable upon him. For kind perusal of this Hon"ble Court copy of the G.O. dated 22.7.1998 is being attached herewith and marked as Annexure CA-1.

10. That the contents of para 8 of the writ petition are denied as stated and it is further submitted that Holy Trinity School is managed by the institution namely Church of North India and from the student from all the caste and religion are studying after paying heavy amount to the institution and also there is no provision for the poor or down trodden section of the society.

Shri Saunders, learned counsel for the petitioner submits that the U.P. Municipal Corporation Act, 1959 provide for exemption from general tax on the schools building. He submits that unamended Section 177 had originally exempted buildings solely used as jails, Court houses, treasuries, schools and colleges. The unamended Section 177 provided as follows :

177. (c) building solely used as schools and intermediate colleges whether aided by the State Government or not, fields, farms and gardens of Government aided institutes of research and development, play-grounds of Government aided or unaided recognized educational institutions and sports stadium.

The Act was amended by U.P. Ordinance No. 20 of 2002 and U.P. Ordinance No. 8 of 2003 on 21.11.2002 and 8.4.2003 respectively. These ordinances could not be replaced by an Act of the Legislature and were allowed to lapse. The U.P. Municipal Corporation Act, 1959 was thereafter amended by U.P. Municipal Corporation (Amendment) Act, 2004 by U.P. Act No. 16 of 2004 w.e.f. 11th August, 2004. The Prefatory Note giving statement of object and reasons appended to the U.P. Municipal Corporation (Amendment) Act, 2004 reads as follows :

Prefatory Note-Statement of Objects and Reasons-With a view to bringing uniformity with other Corporations of the Country in the names of certain offices of the Municipal Corporation and making the provisions more effective and practicable in the present situation, the Uttar Pradesh Municipal Corporation (Amendment) Ordinance, 2002 (U.P. Ordinance No. 20 of 2002) and the Uttar Pradesh Municipal Corporation (Amendment) Ordinance, 2003 (U.P. Ordinance No. 8 of 2003) were promulgated on November 21, 2002 and April 8, 2003 respectively to amend the Uttar Pradesh Municipal Corporation Act, 1959 (U.P. Act No. 2 of 1959). The provisions of the said Ordinances were replaced by the Uttar Pradesh Municipal Corporations (Amendment) (Second) Ordinance, 2003

(U.P. Ordinance No. 29 of 2003) but it could not be replaced by an Act of the Legislature and was allowed to be lapsed. Now it has been decided to amend the said Act with retrospective effect i.e. with effect from November 21, 2002 to provide for,-

1. changing the names of certain offices of the Municipal Corporations;
2. making provision for more than one Additional Municipal Commissioner in a Municipal Corporation;
3. removal of Mayor by the State Government after considering the motion of no-confidence passed by the three-fourth majority of the total number of the members of the Corporation;
4. insertion of certain acts which also disqualify a person from being or from being chosen as the Corporator, a Deputy Mayor or Mayor of a Corporation;
5. increasing financial jurisdiction of the Mayor, the Corporation and the Municipal Commissioner in relation to the execution of contracts and sanction of estimates;
6. changing the procedure of imposition and realization of property tax.

The Uttar Pradesh Municipal Corporations (Amendment) Bill, 2004 is introduced accordingly.

Section 177 (c) was amended by the U.P. Municipal Corporation (Amendment) Act, 2004 providing that building solely used as school and intermediate college, whether aided by the State Government or not shall be exempted from general tax. The amendment of Section 177 is quoted as below :

9. Amendment of Section 177- In Section 177 of the principal Act,--

(a) for clause (c) the following clause shall be substituted, namely :

(c) building solely used as schools and Intermediate colleges whether aided by the State Government or not;

(b) for clause (h) the following clause shall be substituted, namely :

(h) residential buildings occupied by the owner of building, which is located in such area which has been included in the limit of Corporation within five years or the facilities of roads, drinking water and street light provided in the area, whichever is earlier.

The Act was further amended by U.P. Act No. 38 of 2006, amending clause (c) of Section 177 as follows :

177. (c) building solely used as schools and intermediate colleges whether aided by the State Government or not, fields, farms and gardens of Government aided institutes of research and development, playgrounds of Government aided or unaided recognized educational institutions and sports stadium.

5. The exemptions u/s 177 (b), and its subsequent amendments chronologically detailed as above including last amendment by U.P. Act No. 38 of 2006, exempted the buildings solely used as schools and colleges. Initially there was no qualifying words such as "whether aided by the State Government or not". These words were subsequently added in the Amendment Act, 2004, and thereafter the Amendment Act, 2006.

6. In the present case it is not denied that in the campus of the church and the Knox Hall", the school by the name of "Holy Trinity School", is being run in a separate building, which is an annexe of the Boys High School and College. There is no denial in the counter-affidavit that this building is being solely used as school. The petitioner states that the school is not getting any aid by the State Government. In view of the exemption given u/s 177 (c), as amended from time to time, it is immaterial whether the building, which is solely used as school is aided by the State Government or not.

7. There is no other provision in the U.P. Municipal Corporation Act, 1959, nor any reliance has been placed upon any other provisions of law or Government Order, which takes away the exemption provided by Section 177 (c) of the Act to the buildings solely used as school.

8. For the aforesaid reasons, we find that the building of "Holy Trinity School", used solely for the purposes of school, even if it is not getting any aid from the State Government is exempt from payment of house tax. The exemption u/s 177 (c) of the U.P. Municipal Corporation Act, 1959, is not qualified, or conditional and thus the school is not liable to pay any house tax. The writ petition is allowed. The impugned assessment and the bill of house tax and the order dated 28.10.2002 passed by the Tax Superintendent, Nagar Nigam, Allahabad is set aside. This judgment will be operative only on the assessment and demand of house tax, and will not be applicable for any other tax or charges levied by Nagar Nigam or any other statutory body for taxes, fees or service charges.