

(2000) 12 AHC CK 0056

Allahabad High Court

Case No: C.M.W.P. No. 420 of 1998

Mariampur Hospital Society

APPELLANT

Vs

Nagar Nigam, Kanpur Nagar and
another

RESPONDENT

Date of Decision: Dec. 1, 2000

Acts Referred:

- Uttar Pradesh Nagar Mahapalika Act, 1959 - Section 177

Citation: (2001) 1 AWC 14 : (2001) 1 UPLBEC 385

Hon'ble Judges: O. Bhatt, J; M. Katju, J

Bench: Division Bench

Advocate: Sheeba Jose and Pankaj Naqvi, for the Appellant; Anju Jain, for the Respondent

Final Decision: Allowed

Judgement

M. Katju, J.

This writ petition has been filed for a mandamus directing the respondents to refund the amount of Rs. 3,46,875 illegally realised from the petitioner on 13.2.1997 along with interest @ 18%. By an amendment application a prayer for certiorari has also been made to quash the assessment order Annexure-2 to the amendment application. There is a further prayer of mandamus commanding the respondents to pay damages to the petitioner for physical and mental torture suffered by the employees of the petitioners.

2. We have heard learned counsels for the parties.

3. The petitioner is a registered society and is running a charitable hospital in the name of Mariampur Hospital in the city of Kanpur. In para 7 of the petition, it is alleged that all medical advice and treatment to most of the patients coming to the hospital is given free of cost. No charge is taken from poor patients for beds in general wards and medicine is also given free of cost to such patients. By order dated 31.3.1976 passed by the Up-Nagar Adhikari, Kanpur the said officer assessed

the annual rental value of the premises in dispute to be at Rs. 1,58,880 vide Annexure-1 to the petition. In the year 1982 for the first time, a dispute arose as to the liability of the petitioner to pay general taxes in respect of the premises in dispute. By an order dated 26.5.1982 passed by the learned Judge Small Causes Court, Kanpur, the premises in dispute was assessed to annual value of Rs. 80,000 from 1.6.1976 to 30.9.1978. Both the orders dated 26.5.1982 were challenged by the petitioner by filing 2nd Taxation Appeal Nos. 13 of 1982 and 15 of 1982 respectively. Both the appeals were disposed of by an order dated 27.4.1984 and it was held that the premises in dispute is not subject to payment of general taxes being a charitable society. However, the respondents were at liberty to make annual assessment thereof only for collateral purposes other than realisation of general taxes u/s 177 (1) of U. P. Nagar Mahapalika Adhiniyam. A true copy of the order dated 27.4.1984 is Annexure-2.

4. In January, 1987 again annual rental value of the premises in dispute was fixed by issuing notice to the petitioner. In its reply dated 28.1.1987, the petitioner informed the Nagar Mahapalika, Kanpur that in view of the decision in Taxation Appeal Nos. 13 and 15 of 1982 decided on 27.8.1974, the Mariampur Hospital Society has already been held to be a charitable society and has thus been exempted from payment of general taxes, and, therefore, the notice fixing the annual rental value should be cancelled. A true copy of the letter dated 28.1.1987 is Annexure-3. However, the respondents assessed two annual valuation of the premises in dispute at Rs. 2 lacs and Rs. 1,17,000. Being aggrieved the petitioner filed appeal in the Court of Judge Small Causes Court, Kanpur. True copy of the memo of appeal is Annexure-4. In the aforesaid memorandum of appeal, the attention of the Court was drawn to the fact that the petitioner is running a charitable hospital, wherein medical advice and treatment to patients is mostly given free of cost and that by an order dated 27.4.1984 passed by Nagar Mahapalika Tribunal, Kanpur it was held to be a charitable society and has thus been exempted from payment of general taxes u/s 177 (b). This appeal was allowed vide order dated 11.9.1987 Annexure-5 to the petition and it was held that the petitioner is exempt from general taxes.

5. In para 18 of the petition, it is stated that the aforesaid two judgments dated 27.4.1984 and 11.9.1987 were not subject to further appeals before any other competent courts and thus, the said judgments became to remain final and conclusive as between the parties. In January, 1990 a demand of Rs. 3,00,865.75 was raised as arrears of general taxes against the petitioner. The petitioner filed objection dated 22.1.1990 vide Annexure-6 to the petition in which it mentioned that the premises has already been exempted from general taxes by judgments dated 27.4.1987 and 11.9.1987. On 30.12.1993 the Nagar Mahapalika, Kanpur was apprised of the fact that the premises in dispute is wholly exempt from payment of general taxes as per judgments dated 27.4.1984 and 11.9.1987. A true copy of the letter dated 30.12.1993 is Annexure-7 to the petition in this connection and another letter dated 30.1.1997 is Annexure-8 to the petition. However, instead of dropping

the aforesaid demand, the respondents issued a demand dated 6.2.1997 seeking to realise a sum of Rs. 3,46,875 as general taxes. It is alleged in para 23 of the petition that the staff of the respondents misbehaved and harassed Sister Phyllis who had gone to visit the office of respondents in order to apprise the officer concerned that the petitioner is not liable to pay any general taxes. The said Sister was illegally detained and only set free when she assured the authorities that she would make the payment as early as possible of the amount demanded. In para 24 of the petition, it is alleged that the concerned Sister was coerced and forced to pay the said amount and the Jeep of the hospital had been illegally attached for the payment of the aforesaid dues. The aforesaid facts were brought to the knowledge of the then Administrator, Nagar Nigam, Kanpur vide letter dated 14.2.1997. The petitioner was compelled to pay the aforesaid amount of Rs. 3,46,875 on 13.2.1997. The petitioner filed assessment appeal No. 89 of 1997 which is still pending in the Court of Judge. Small Causes, Kanpur Nagar.

6. In this case, no counter-affidavit has been filed by the respondents though Sri N. Mishra has appeared for the respondents and several opportunities had been given to file counter-affidavit. The Court on 5.11.1998 had issued notice to the respondents and on that date, Sri N. Mishra had appeared and prayed for two weeks to file counter-affidavit. The order dated 5.11.1998 reads as follows :

"Issue notice. Notice on behalf of respondent Nos. 1 and 2 have been accepted by Sri N. Mishra, Advocate. He prays for and is granted two weeks" lime to file a counter-affidavit.

List for admission on 23.11.1998."

When the case was listed on 23.11.1998, no one appeared for the respondents. Hence the case was ordered to be put on the next date, i.e., 24.11.1998. The order-sheet of 24.11.1998 states that Sri N. Mishra is out of station and hence the case was adjourned to 7.12.1998. On 7.12.1998, it was adjourned and thereafter on several occasions, the respondents counsel was granted time to file counter-affidavit. On 8.12.1999 he was granted two weeks to file counter-affidavit. On 4.5.1999 respondents were granted three weeks and no further time to file counter-affidavit. On 8.11.2000 the respondents were again granted time to file counter-affidavit. However, despite these orders no counter-affidavit has been filed so far.

7. We are not inclined to grant any further time as a stop order has already been passed in this case on 4.5.1999 that three weeks and no more further time is granted to file counter-affidavit.

8. No doubt an appeal is pending against the bill dated 6.2.1997 being Assessment Appeal No. 89 of 1997 but in our opinion no useful purpose would be served by directing that the aforesaid appeal be decided since the point involved has already been decided in the appellate order dated 27.4.1987 and 11.9.1987. Annexures 2

and 5 to the petition. In those orders, it has been held that the property of the petitioner is exempt u/s 177 of the U. P. Nagar Mahapalika Adhiniyam since it is charitable society. Section 177 (b) state :

"The general tax shall be levied in respect of ail buildings and lands in the City except :

(b) buildings and lands or portions thereof solely occupied and used for public worship or for a charitable purpose".

9. There can be no manner of doubt that the petitioner is doing charitable work, and hence the properties of the petitioner are exempt u/s 177 (b). The Hospital, Nursing Homes, etc. are being run by the Sisters of the Roman Catholic Church. It is well known that the Sisters of the Roman Catholic Church are doing very noble work in India and they have made great sacrifices denying to themselves family life and other comforts and pleasure and are serving society by running excellent convent schools, hospitals, etc. It is deeply regrettable that Sister Phyllis was detained by the authorities and the Jeep of the petitioner was attached although the point had already been decided by orders dated 27.7.1984 and 11.9.1987 which held that the properties of the petitioner are exempt from general taxes. In the circumstances, the writ petition is allowed and the respondents are directed to refund the amount of Rs. 3,46,875 illegally realised on 13.2.1997 along with 15% interest from 13.2.1997 till date. The refund of this amount with interest must be made to the petitioner within two months from today by the respondents. In addition, the respondents must pay an extra amount of Rs. 25,000 to the petitioner as damages for the harassment caused to the Sisters who are running the hospital and this amount must also be paid to the petitioner within two months from today. The impugned assessment order which is Annexure-2 to the amendment application is quashed. The respondents are also restrained from realising water tax, sewer tax and other municipal dues from the petitioner in future till the aforesaid amounts are paid to the petitioner.

10. The writ petition is allowed with the aforesaid directions.