

(2012) 09 JH CK 0110

Jharkhand High Court

Case No: W.P (T) No. 2716 of 2006

Marwari Kanwar Sangh
Dharamshala, Baidyanathdham,
Deoghar

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Sept. 5, 2012

Acts Referred:

- Bihar Municipal Act, 2007 - Section 248, 84(2)
- Income Tax Act, 1961 - Section 80G

Citation: (2012) 4 LJLR 183

Hon'ble Judges: Prakash Tatia, J; Aparesh Kumar Singh, J

Bench: Division Bench

Advocate: Rajeeva Sharma and S. Akhtar, for the Appellant; Anil Kumar Jha for the Respondent No. 3, for the Respondent

Final Decision: Allowed

Judgement

1. Heard learned counsel for the parties. The writ petitioner, Marwari Kanwar Sangh Dharamshala, is aggrieved against the order dated 30th April, 2004 passed by the Deputy Commissioner, Deoghar, in Misc. Case No. 9/2003-04, whereby the said authority held that the writ petitioner is not a religious body and held that the petitioner is liable to pay holding tax under the provisions of the Bihar Municipal Act, 1922 and specifically u/s 84(2) of the said Act of 1922.

2. Learned counsel for the petitioner submitted that the petitioner initially approached this Court by filing W.P. (C) No. 119/2002, which was disposed of on 19th September, 2003 with a direction to the respondent authority to decide the question afresh that whether the petitioner is, in fact, a charitable institution registered as such and therefore, entitled to the privileges to which such an

institution gets under the provisions of the Bihar Municipal Act. It is submitted that the petitioner placed sufficient materials before the said authority indicating that the petitioner is a registered charitable society under the provisions of the Bihar Hindu Religious Trust Act, 1950 and being a charitable institution, it got the certificate of exemption under Income Tax Act for its donors from payment of income tax of the donations received by this institution and that this institution runs Dharamshala for the benefit of the pilgrims who are going to visit Baba Baidyanath Temple and they are providing rooms to the pilgrims on concessional rent along with other facilities and for the poor pilgrims, they are providing free of charge shelter and that the petitioner also is providing space for the purpose of social functions organized by the Social Organizations and it also has a surplus balance of Rs. 11,27,354.31 for the year 2002-03. It is further submitted that without considering these facts and without any counter-facts on record, the said authority declared the petitioner as a non-religious Institution/ Trust and therefore, held that the petitioner is liable to pay holding tax with 50% exemption ignoring the provision contained in section 84(2) of the Act of 1922, wherein it is clearly provided that a place of religious assemblage or as a Dharmshala is exempted from payment of holding tax.

3. Learned counsel for the Municipal Corporation relied upon the definition of Dharmshala given in para 1.41 at page 31 of the book of the Hindu Law of Religious and Charitable Trusts, 5th Edition of A.C. Sen, published by Eastern Law House and submitted that the petitioner nowhere stated that it is a Dharmshala providing "free" food and shelter to the pilgrims and therefore, the petitioner was not exempted from the holding tax, as per provision of section 84(2) of the Act, 1922, from payment of holding tax.

4. We considered the submissions of the learned counsel for the parties. Section 84(2) of the Bihar Municipal Act, 1922 reads as under:-

84. Restrictions on the imposition of the tax on holdings.- (1)...

(2) Any holding which is used exclusively as a place of a public worship or religious assemblage, or as a dharmshala, or as mortuary, or which is duly registered as a public burial or burning ground u/s 248 shall be exempted from the tax on the holdings.

5. The facts which have been taken note of by the authority in the impugned order dated 30th April, 2004 are that the petitioner is a registered religious society and has been registered under the Bihar Hindu Religious Trust Act, 1950; the said trust has obtained exemption certificate u/s 80G of the Income Tax Act, 1961; it provides shelter to the pilgrims on concessional rent and provides free shelter to poor pilgrims; it also provides its buildings for holding religious functions and has shop which is let out on rent and the Trust also has surplus fund since last 3 years and in the year 2002-03, it had a balance of Rs. 11,27,354.31.

6. After recording all these facts and without examining whether property in question is Dharamsala and without giving any reasons, straightway the authority declared that the petitioner is not a religious trust in spite of the fact that it is already registered under the statutory provision of law as religious trust and has exemption certificate under the Income Tax Act, 1961 specifically u/s 80G. The authority without rejecting the plea of the assessee that it gives shelter to the pilgrims on concessional rent and to poor pilgrims without any rent held that petitioner's building is not exempt from payment of tax u/s 84(2).

7. The word, "Dharmasalas" had not been defined in the Bihar Municipal Act as adopted by the State of Jharkhand. However, we take judicial notice of the fact that any building giving shelter to the pilgrims who visit to a particular temple, prima facie that may be treated to be a Dharmasala subject to the condition that profit should not be the motive behind running the Dharmasala. So far as the definition given in the book of the Hindu Law of Religious and Charitable Trusts, 5th Edition of A.C. Sen, published by Eastern Law House, is concerned, it will be appropriate to quote that definition given at page 31, which is as under:-

1.41. Dharmasalas. - Dharmasalas, rest houses, and satras which are known by the name of Pratishray occupy a position analogous to that of mutts, and they are generally dedicated for the benefit of travellers and ascetics. The Bahni Puran thus describes the dedication of Pratishraygrih: "Having caused to be made an auspicious and spacious asylum of burnt bricks, with strong pillars, and large compound, accompanied with distinctive mark, covered with plaster, guarded, equipped with comfortable apartments, and conferring endless religious merit - should dedicate to the Saiva and the Vaishnava ascetics. And having caused to be made an auspicious, spacious and beautiful house, furnished with good food, and equipped with pure drinking water, and possessed of an auspicious gate should dedicate it for the benefit of the poor and helpless and travellers." All these are intended for the benefit of public or certain sections of the public and there is no specific donee by whom the gift is to be accepted.

8. Bare perusal of the definition given in the above book indicates that it is not the exhaustive definition of the Dharamshala. It has taken help from the old ways of working of the Dharmasalas which has changed now a lot with the passage of time. However, in this definition, it is nowhere provided that the Dharmasalas should provide "free of cost" food and shelter to all. Therefore, we do not find any substance in the submission of the learned counsel for the respondent that the present building cannot be considered to be a Dharmasala because it has not been contended by the petitioner that it is giving "free" food and shelter to the pilgrims. The salient feature of this Dharmasala is that it has a building for the purpose of giving shelter to the pilgrims visiting the Temple of Baba Baidyanath, a very important religious temple of the Hindus in the entire country, and that it provides shelter to the pilgrims on concessional rent and also gives free shelter to the poor

and needy pilgrims and it also gives its building for organizing social works. The authority might have felt influenced by the surplus fund lying with the petitioner, Dharmasala and therefore, it has observed that it is running in profit. A religious institution is required to keep certain fund for its own purposes, which includes for giving food on concessional rate by taking the element of rise in price in future as well as for the purpose of its expansion but that surplus can be only in accordance with law. The petitioner, Dharmasala, is fully controlled under the provisions of the Bihar Hindu Religious Trust Act, 1950 and also is under scanner of the Income Tax Department. Mere because of one fact of surplus fund with it, it cannot be inferred that the petitioner, Dharmasala, has object to earn profit. Thus, we are of the considered opinion that there was no reason for the said authority to declare that the petitioner is not a religious trust, which finding is wholly without jurisdiction and is contrary to its registration under the relevant State Act as religious trust and therefore, this finding cannot be sustained. In sum and substance, the finding recorded by the said authority is contrary to the facts available on record specifically in the impugned order itself and the order passed by the said authority refusing exemption of the petitioner's Dharmasala u/s 84(2) of the Act, 1922 cannot be sustained and is liable to be set aside and therefore, it is held that the petitioner's Dharmasala is exempted under section 84(2) of the Act, 1922. The writ application of the petitioner is allowed accordingly.