

CASE NO.:
Appeal (civil) 5628 of 2000

PETITIONER:
CHRIST THE KING CATHEDRAL

Vs.

RESPONDENT:
JOHN ANCHERIL & ANR.

DATE OF JUDGMENT: 24/07/2001

BENCH:
S. Rajendra Babu & Shivaraj V. Patil

JUDGMENT:

[WITH C.A. Nos. 5781/2000, 6375/2000, 6376/2000, 6378/2000, 6380/2000, 6381/2000, 6372/2000, 6374/2000, 6382/2000, 6373/2000 and C.A. No.4456/2001 (arising out of S.L.P. (C) No. 11259/2000)]

J U D G M E N T

RAJENDRA BABU, J. :

C.A.Nos. 5628/2000, 5781/2000, 6375/2000, 6376/2000, 6378/2000, 6380/2000, 6381/2000, 6372/2000, 6374/2000 and C.A. No. 4456/2001 (arising out of S.L.P. (C) No. 11259/2000)

Leave granted in S.L.P. (C) No. 11259/2000.

Two notifications were issued under Section 25 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short the Act) one S.R.O. No. 435/92 issued on 7.3.92 published in the Kerala Gazette on 7.4.92, which exempted in public interest the buildings of all Churches/Mosques of all the minority religions from the provisions of Sections 4, 5, 7, 8, 11 and 13 of the Act and another notification S.R.O. No. 769/96 was published exempting buildings of all Dioceses, Arch-dioceses, Monasteries, Convents, Wakfs and Madarsas also from the provisions of Sections 4, 5, 7, 8, 11 and 13 of the Act and amended earlier notification. A batch of writ petitions was filed in the High Court challenging the validity of these notifications. The High Court held that there is no application of mind by the Government in issuing the impugned notifications resulting in arbitrary exercise of the discretionary powers conferred upon a statutory authority and there is no material before the Government to exercise such exemption. In reaching this conclusion, the High Court took into consideration that the buildings of Churches or Mosques are commercially used and, therefore, granting of exemption under Section 25 of the Act on the basis of ownership is not right. The High Court also proceeded to consider the scope of secular nature of the Constitution and observed that conferment of power upon the Government to grant such blanket exemptions would defeat the very power conferred on it.

In the counter affidavit the State supported the exemptions on the

basis of the law declared by this Court. This Court in P.J. Irani v. State of Madras, 1962 (2) SCR 169, held that a similar power vested under the Madras Buildings (Lease and Rent Control) Act, 1949 to exempt any building from the provisions of the Madras Act is not violative of Article 14 of the Constitution by holding that the charitable and religious trusts or endowments fall into a separate class. In S. Kandaswamy Chettiar v. State of Tamil Nadu & Anr., 1985 (1) SCC 290, this Court upheld grant of total exemption in respect of buildings belonging to public trusts, religious or charitable in nature, on the basis that such trusts constituted a well recognised distinct group inasmuch they not only serve public purpose, but the disbursement of their income is governed by the objects with which they are created

On an earlier occasion in Jayakaran v. Kerala Health R&W Society, 1994 (1) KLT 24, the High Court held as follows : -

Grant of exemption in favour of charitable bodies like the petitioner must be held to be in public interest. Even though no reasons are stated in the notification granting exemption it is enough if it is stated in the counter-affidavit. The notification granting exemption is undisputably being in public interest, the same is not open to challenge on the ground urged in the Original Petition.

The High Court after referring to the said decision held that the exercise of discretionary power is subject to test of reasonableness but observed that by one stroke the entire buildings owned by minority religions in the State have been taken away from the purview of the Act without being supported by any material enabling the Government to consider the issue in a legal and proper manner uninfluenced by any extraneous considerations or acting under the dictation of a third party. The High Court compared the provisions under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960 considered in S. Kandaswamy Chettiar case (supra) and the provisions of the Act under consideration and drew a distinction between the two provisions. The relevant portions of the said two Acts are as follows :

Section 29 of the Tamil Nadu Act
Section 25 of the Act

29. Exemption Notwithstanding any thing contained in this Act, the Government may, subject to such conditions as they deem fit, by notification, exempt any building or class of buildings from all or any of the provisions of this Act.

Notwithstanding anything contained in this Act, the Government may, in public interest or for any other sufficient cause, by notification in the Gazette, exempt any of the provisions of the Act.

The High Court noticed that the power of exemption under Section 29 of the Tamil Nadu Act is general in nature, while such power could be exercised under the Act only in public interest or for any other sufficient cause. But, we find that distinction sought to be made by the High Court on the basis of language of these two provisions is not well founded. The Government may grant exemption and while granting exemption even under the Tamil Nadu Act it has got to bear in mind that

it should be in public interest or for any other sufficient cause and it cannot be whimsical or arbitrary exercise of these powers as such action could attract the wrath of Article 14 of the Constitution. Therefore, distinction sought to be made by the High Court between these two provisions is not of much materiality.

The law had been stated by this Court to the effect that public religious or charitable endowments or trusts constitute a well recognised group which serves not only public purposes, but disbursement of their income is governed by the objects with which they are created and buildings belonging to such endowments or trusts clearly fall into a class distinct from the buildings owned by private landlords. It is in respect of three areas a regulation would be made under the Act, as has been done in other similar enactments and these areas are (i) with respect to regulation of lease of buildings (residential or non-residential); (ii) control of rent of such buildings and (iii) control of eviction of tenants from such buildings. A public trust, as has been held in *S. Kandaswamy Chettiar* case (supra), is not likely to unreasonably act either in the matter of enhancement of rent or eviction of tenants being institutions of religion or charity. On that basis, this Court upheld the validity of the exemption granted under the Tamil Nadu Act in favour of such trust or endowment. In the present case, the contention has been specifically put forth that the appellants fall into that very category which came up for consideration before this Court in *S. Kandaswamy Chettiar* case (supra). Therefore, no distinction can be made between that class of owners of the buildings in that case and in the present case. We do not understand as to what other material was required by the Court in a matter of this nature if the contention put forth before this Court is not that Churches or Mosques, Dioceses, Arch-dioceses, Monasteries, Convents, Wakfs and Madarsas are not religious and charitable in nature.

Shri Nageshwar Rao, the learned counsel appearing for the contesting respondents, submitted that there is total non-application of mind by the Government in the matter of grant of exemption and the guidelines indicated in *S. Kandaswamy Chettiar* case (supra) have not been followed in the present case and, therefore, the exemption should not have been granted in the present case. In *S. Kandaswamy Chettiar* case (supra) an affidavit had been filed as to the lower rents that was being paid and the tenants were exploiting the situation and brought the charitable institutions to a situation of helplessness and that position not having been challenged the Court made those orders. If we bear in mind the fact that the purpose of the Act is apparently to prevent unreasonable eviction and also to control rent and if the trustees of religious and public charities are given freedom to charge normal market rent with the further freedom to evict the tenants for not paying such market rent, the result would be unjust and causes hardship to them. But apprehension, by itself, is not sufficient. There is no material on record to show that in any of these cases the landlords would resort to such a course of action. On the other hand, if the building belonging to such public trust or religious institution is exempt from Act, the purpose of the trust could be carried out much better is quite clear. If that is the object with which the Government has granted exemption, we do not think, there is any reason to quash the notifications impugned before the High Court.

The High Court has unnecessarily gone at tangent on various constitutional and administrative law questions which are wholly unnecessary to be decided in the present case. The High Court ought to have riveted its attention only to the aspect whether there was due application of mind to the issue of notifications in question in terms of the provisions of the Act and, if that aspect was satisfied, no further questions arose for consideration in the present case and thus the observations made by the High Court, in our view with respect, are irrelevant.

An argument is sought to be raised on the basis of ownership of property that there should not have been a distinction as is being made in the present case. That was the very basis of distinction made in case of statutory bodies like the Housing Board, local authorities which was noticed in the Jayakaran v. Kerala Health R & W Society case (supra) or registered Wakfs which was considered in Lakshmanan v. Mohamood, 1992 (1) KLT 85 (FB). When such bodies or institutions falling to a distinct class by themselves and exemption granted to them would serve a public purpose, namely, to carry out the objects of the trust or the endowment or religious activity in a broad sense, we do not think that the fine distinction sought to be made by the High Court in this regard is justified.

Reliance is placed before us on the decision in Rohtas Industries Ltd. v. S.D. Agarwal & Anr., 1969 (3) SCR 108, to contend that if there is no material at all upon which the authority could form the requisite opinion, the Court may infer that the authority passed the order without applying its mind to the relevant facts. But, in the present case, we should look at the fact that this Court had in S. Kandaswamy Chettiar case (supra) explained the scope of the provisions similar to Section 25 of the Act and the parameters within which such power could be exercised. Thereafter, the Kerala High Court in Jayakaran v. Kerala Health R & W Society case (supra) had upheld the notification as being in public interest even in the absence of any reasons being stated in the notification. Again, the same Court had upheld a similar notification in relation to property belonging to Devaswom Board in State of Kerala v. Vijayan, 1978 KLT 342, and to a wakf in Lakshmanan v. Mohamood case (supra). Therefore, we think that the decision of the High Court has to be set aside and the notifications issued impugned in the two writ petitions are held to be valid.

The writ petitions deserve to be dismissed by allowing civil appeals. Ordered accordingly. No costs.

C.A.Nos. 6373/2000 and 6382/2000

In view of the orders made in Civil Appeal No. 5628/2000 and connected matters, these civil appeals shall stand dismissed.

J.
[S. RAJENDRA BABU]

J.
[SHIVARAJ V. PATIL]

JULY 24, 2001.