

Court No. - 40

Case :- WRIT - C No. - 31049 of 2023

Petitioner :- Shri Shiv Mandir Gauri Shanker Vishvanath
Vaikunth Dham Evam Shamshan Bhumi Pravandhak Sabha

Respondent :- State Of U.P. and 2 Others

Counsel for Petitioner :- Chetan Chatterjee

Counsel for Respondent :- Anand Prakash Paul,C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Chetan Chatterjee, learned counsel for the petitioner; Sri Pankaj Rai, learned Additional Chief Standing Counsel for the State respondent no.1 and Sri A.P. Paul, learned counsel for the respondent nos.2 and 3.

2. "Shri Shiv Mandir Gauri Shanker Vishvanath Vaikunth Dham Evam Shamshan Bhumi Pravandhak Sabha, Baba Lal Das Road, Saharanpur" through its Manger (in short the Society) has preferred the present writ petition under Article 226 of Constitution of India seeking following reliefs:-

"a. Issue a writ order or direction in the nature of certiorari quashing the demand notice dated 05.08.2022 (Annexure No.9 to the writ petition) and consequential order dated 17.08.2023 (Annexure No.11 to the writ petition) passed by the respondent no.3.

b. Issue a writ, order or direction in the nature of mandamus directing the respondent nos.2 and 3 not to demand any charge and the interest thereupon from the petitioner in pursuance of process fee for approval of map etc. and refund the amount deposited by the petitioner under protest on 10.11.2014 and 05.05.2017, in pursuance of 'Uttar Pradesh Nagar Yojana Aur Vikas (Vikas Shulk Ka Nirdharan, Udgrahan Evam Sanghran) Niyamavali, 2014' dated 17.11.2014 (Annexure No.3 to the writ petition) and consequential Circular dated 18.07.2016 (Annexure No.4 to the writ petition) issued by the respondent no.1.

c. Issue any other suitable writ order or direction as this Hon'ble Court may deem fit and proper to direct considering the facts and circumstances of the case.

d. Award cost of the petition."

3. The petitioner claims to be a Charitable Society registered by the Registrar of Societies, Uttar Pradesh under the Societies Registration Act, 1860 vide Registration Certificate No.719/1990-1991 dated 07.08.1990, which is renewed from time to time. For conducting the affairs of the Society it had also framed Bye-laws of the Society, wherein it is provided that the Society would run and maintain the funeral site (Shamshan Ghat), temple, Dharamshala, Charitable Hospital, Orphanage and library. The

exemption is claimed by the petitioner under Section 53 of Urban Planning and Development Act, 1973 (in short, Act, 1973), which provides that "notwithstanding anything contained in this Act, the State Government may by notification in the Gazette exempt, subject to such conditions and restrictions, if any, as may be specified in such notification any land or building or class of lands or buildings from all or any of the provisions of this Act or rules or regulations made thereunder".

4. Under the said provision, the State of Uttar Pradesh had framed the Niyamavali known as "Nagar Yojana aur Vikas (Vikas Shulk Ka Nirdharan, Upgrahan Evam Sangrahan) Niyamavali, 2014" (in short, Niyamavali, 2014), which was gazetted and notified on 17.11.2014. In view of the Niyamavali, 2014, a circular/notification was issued on 18.07.2016, which provides that in view of Niyamavali, 2014, the buildings, which are used for the purpose of charitable, spiritual/religious institution, charitable institutions for the benefit of general public, which have been specified in the Circular, would be exempted from development charge, which is normally charged by the Development Authorities under the Act, 1973. The petitioner Society applied for construction of temple and cremation site before the Saharanpur Development Authority (in short, SDA) and the same was approved by the SDA on 17.11.2014. The petitioner had also applied for exemption under Section 80-G of the Income Tax Act, 1961 (in short, Act, 1961) and the same was accorded/registered under Section 12-A-A (1) (b) (i) of the Act, 1961 with effect from 01.04.2014 vide order dated 29.03.2016 passed by the Commissioner of Income Tax (Exemption), Lucknow. Thereafter, a separate order was passed by the Commissioner of Income Tax (Exemption) Lucknow on 02.06.2017 and both the orders have been brought on record collectively as Annexure No.6 to the writ petition. It is also claimed that at the time of moving an application for sanction of plan, the applications for registration under Section 12-A and 80-G of the Act, 1961 were pending for approval. Finally, the registration was also accorded under the Act, 1961 w.e.f. 01.04.2014.

5. Learned counsel for the petitioner vehemently submitted that even though the Society is registered as charitable Society since 07.08.1990 and as per bye-laws of the Society, it is running and maintaining the funeral sites, temple and Dharamshala. Admittedly, the State Government had framed the Niyamavali, 2014 for providing exemption from realisation of process fee, development charges and in view of the Niyamavali, 2014, the

Society is eligible for an exemption of process fee, development charges etc. More so, the said relief has also been pressed on the ground that the Society has already got benefits under Section 12A and 80G of the Act, 1961. Even at the time of moving an application for sanction of plan, even on the said stage the application for exemption under the Act, 1961 was pending consideration. Later on, the same was accorded by the Income Tax Department on 29.03.2016 but the same was effective w.e.f. 01.04.2014. He further apprised to the Court that the authority had restrained the petitioner Society not to raise any construction, even though the map was sanctioned. In most arbitrary manner, they have issued the demand notice and in protest the petitioner Society had initially deposited an amount of Rs.21,45,000/- on 10.11.2014 and further it had deposited Rs.5,00,000/- on 05.05.2017 (total Rs.26,45,000/-). He has also placed reliance on the Government order dated 21.05.1998 and the subsequent Government order dated 19.10.2002, which contains the foundation for laying down number of exemptions and the same is also reflected from the subsequent Circular dated 19.11.2014. It is pressed that the Circular dated 21.5.1998 is still in vogue, which is also available on the official website i.e. 'www.awasbandhu.in' .

6. In this backdrop, learned counsel for the petitioner submits that the Government order dated 19.10.2002 provides that the religious institutions, which work for public and charitable purpose without earning any profit or loss and do not indulge in any business activity, are exempted from development charge etc. It is also claimed that the subsequent Government order dated 19.10.2002 had amended the previous Government order dated 21.05.1998 and in view of the Niyamavali, 2014 and the successive Government orders, the petitioner Society is entitled for the benefit in the light of the exemption so accorded by the Income Tax Department. In support of his submission, he has placed reliance on the judgement passed by the High Court of Punjab and Haryana at Chandigarh in **Commissioner of Income Tax, Jalandhar-I, Jalandhar vs. Gulab Devi Memorial Hospital Trust, Jalandhar** reported in 2016 0 Supreme (P&H) 2552.

7. Per contra, Sri A.P. Paul, learned counsel for the SDA has vehemently opposed the writ petition and reiterated the counter affidavit. He submits that at the time of sanction of plan, admittedly no exemption was accorded by the Income Tax Department and therefore, no exemption is to be accorded to the petitioner. Moreover, the Society had accepted the demand raised by the SDA at the time of sanction of plan on 17.11.2014 and

therefore, no benefit is to be extended in favour of the Society. At the relevant point of time, no such exemption was available to the Society. Even from time to time notices were sent to the Society but till date no satisfactory response has been filed and rightly the impugned notices have been issued, which are fully sustainable in the eyes of law and are liable to be upheld by this Court.

8. Heard rival submissions and perused the record.

9. We find that the petitioner, which is a charitable society, applied for sanction of map for construction of temple and cremation site, which was so accorded by the SDA vide order dated 17.11.2014. Thereafter, the petitioner Society had constructed the building in question for charitable purposes and claimed concession for payment of process fee, development fee etc. as provided under Section 53 of the Act, 1973. It had also applied for exemption under Section 80-G of the Act, 1961 and the same was accorded with effect from 01.04.2014 vide order dated 29.03.2016 passed by the Commissioner of Income Tax (Exemption) Lucknow under Section 12AA (1) (b) (i) of the Act, 1961. Meanwhile, the petitioner Society had deposited a sum of Rs.26,45,000/- under protest with the SDA. Again, the respondent no.3 had sent a demand notice to the petitioner on 05.08.2022 for an amount of Rs.59,33,374/- alongwith interest of Rs.84,71,925/-, (total Rs.1,44,05,299/-). The petitioner society submitted its objection on 14.08.2022 categorically stating that the petitioner is exempted as per Niyamavali, 2014 and consequential Circular dated 18.07.2016 and it is also accorded exemption under the Section 12AA (1) (b) (i) of the Act, 1961 w.e.f. 01.04.2014. Finally, the respondent no.3 vide impugned order dated 17.08.2023 has refused to grant exemption to the petitioner Society on the ground that from time to time notices were sent to the petitioner and at the time of sanction of map, the petitioner Society was not accorded exemption under Section 12A and 80G of the Act, 1961.

10. It is not in dispute that at the time of sanction of map, the applications of the petitioner Society for registration under Section 12-A and 80-G of the Act, 1961 were pending for approval and the same was approved by the SDA on 17.11.2014. Thereafter, the Commissioner of Income Tax (Exemption), Lucknow had accorded exemption to the petitioner Society under Sections 12-A and 80G of the Act, 1961 on 29.03.2016 with effect from 01.04.2014. The Government order dated 19.10.2002 provides that the religious institutions, which work for public and charitable purpose without earning any profit or loss and do not indulge in any business activity, are exempted from development charge etc.

The subsequent Government order dated 19.10.2002 had amended the previous Government order dated 21.05.1998. In view of the Niyamavali, 2014 and the successive Government orders, the petitioner Society is entitled for concession for payment of process fee, development fee etc. as provided under Section 53 of the Act, 1973 in the light of the exemptions so accorded by the Income Tax Department on 29.03.2016 w.e.f. 01.04.2014.

11. In the aforesaid facts and circumstances, the impugned orders cannot sustain and the same are accordingly set aside.

12. Consequently, the writ petition is allowed and the matter is relegated to the Vice Chairman, SDA to take a fresh decision within a period of six weeks from the date of production of certified copy of this order but certainly considering the Niyamavali, 2014 and the exemption under Section 12A and 80G of the Act, 1961.

Order Date :- 27.5.2024

NLY/RKP