

[2023 LiveLaw \(SC\) 118](#)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

DR. DHANANJAYA Y. CHANDRACHUD; J., CJI., PAMIDIGHANTAM SRI NARASIMHA; J., J B PARDIWALA; J.
Civil Appeal No 6799 of 2017; February 9, 2023

M/s Lisie Medical Institutions versus The State of Kerala & Ors.

Kerala Building Tax Act 1975; Explanation to Section 3(1) - 'Charitable purpose' not limited to 'free medical relief'- The Explanation goes to indicate that 'charitable purposes' includes and is, therefore, not confined to the relief of the poor and free medical relief. Consequently, the decision in *SH Medical Centre Hospital vs State Of Kerala & Ors (2014) 11 SCC 381* to the extent of the interpretation which is placed on the Explanation to Section 3(1)(b) of the Kerala Building Tax Act 1975 does not correctly reflect the position in law which is clarified above. The decision in *SH Medical Centre Hospital* is, therefore, overruled to the above extent. (Para 10)

Kerala Building Tax Act 1975; Explanation to Section 3(1) - Section 3(1)(b) provides that nothing in the Act shall apply to buildings which are used 'principally' for specific purposes, including among them, 'charitable purposes'. The expression "principally" conveys the meaning of that which is the dominant purpose. The interpretation placed by the two-Judge Bench on the expression "principally used for charitable purposes" does not call for interference in view of the statutory language used in Section 3(1). Principal use refers to the dominant substantive use as distinguished from an ancillary use. (Para 9)

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For Respondent(s) Mr. V Giri, Sr. Adv. Mr. C. K. Sasi, AOR Mr. Abdulla Naseeh V T, Adv. Ms. Meena K Poulouse, Adv. Mr. Ramesh Babu M. R., AOR

J U D G M E N T

Dr. Dhananjaya Y. Chandrachud , CJI;

1 The present reference to a three Judge Bench has been occasioned in a referring judgment of a two Judge bench in *Lisie Medical Institutions Vs State of Kerala*¹. The two judge Bench has doubted the correctness of certain observations contained in an earlier decision of two Judges in *SH Medical Centre Hospital vs State of Kerala*².

2 We have heard Mr R Basant, senior counsel appearing on behalf of the appellant and Mr V Giri, senior counsel appearing on behalf of the respondents.

3 The issue turns on the interpretation of the provision for exemptions contained in Section 3(1) of the Kerala Building Tax Act, 1975, which is extracted below:

"3. Exemptions – (1) Nothing in this Act shall apply to

(a) buildings owned by the Government of Kerala or the Government of India or any local authority; and

¹ (2017) 14 SCC 533

² (2014) 11 SCC 381

(b) buildings used principally for religious charitable or educational purposes or as factories or workshops.

Explanation.– For the purpose of this sub-section, “Charitable purpose” includes relief of the poor and free medical relief.”

4 Clause (b) of sub-Section (1) of Section 3 of the Kerala Building Tax Act 1975 stipulates that nothing in the enactment shall apply to buildings used “principally for ... Charitable ... purposes”. The Explanation [now Explanation (1)] indicates that for the purpose of the sub-section ‘charitable purpose’ includes “relief of the poor and free medical relief”. Clearly, therefore, the Explanation indicates that the meaning of the expression ‘charitable purpose’ is not confined to relief of the poor and free medical relief as is evidenced by the use of the expression ‘includes’. When a statute uses the expression ‘includes’, it is a well settled principle of interpretation that the elucidation is not intended to be exhaustive.

5 However, while construing the provisions of Section 3(1)(b) of the Kerala Building Tax Act 1975, the two Judge Bench in **SH Medical Centre Hospital** (supra), has incorporated the following observations in Paragraph 17 of the Judgment:

“The High Court has correctly interpreted the “Explanation” clause to Section 3(1) of the Act to hold that “charitable purpose” means “relief of the poor and free medical relief”.”

(Emphasis Supplied)

6 The observation which is extracted above suggests that the two-Judge Bench construed the Explanation to Section 3(1) to mean that a ‘charitable purpose’ is confined only to relief of the poor and free medical relief. This observation of the two-Judge Bench in **SH Medical Centre Hospital** (supra) does not accord with the plain meaning of the Explanation to Section 3(1). It was this aspect which was noted in the referring judgment by A K Sikri, J in the following observations:

“16. ... With due respect to the Bench which rendered the judgment in *S.H. Medical Centre Hospital Vs State of Kerala*, (2014) 11 SCC 381, it appears that an error in interpreting Explanation I to Clause 1 of Section 3 of the Act has occurred in not noticing that it contains the word “includes” and not “means”. This error led to holding that “charitable purpose” meant only “relief of the poor and free medical relief”. Relief to the poor and free medical relief is only one of the facets to charitable purpose and Explanation simply clarifies that too to be a charitable purpose. However, the inclusive definition points out that relief to poor and free medical relief is not exhaustive as to what charitable purpose would mean. Thus, in order to find out the true scope of charitable purpose, one will have to look into the judgments of this Court, even if this very expression is examined in the context of the Income Tax Act.”

7 The two judge bench in **SH Medical Centre Hospital** (supra) conflated the use of the word ‘include’ with ‘means’. The Explanation to Section 3(1)(a) uses the expression ‘includes’. The plain intendment is that relief of the poor and free medical relief are not exhaustive of the content of charitable purpose.

8 At this stage, it would be material to note the submission of the respondents, urged by Mr V Giri, senior counsel, to the effect that apart from the interpretational issue which is addressed in the decision of the two-Judge Bench in **SH Medical Centre Hospital** (supra), the Court has dwelt on other aspects of Section 3(1). Mr. Giri adverted to the expression “buildings used principally for ... charitable ... purposes” in Section 3(1)(b) and urges that the interpretation of that phrase in the decision in **SH Medical Centre Hospital** is correct.

9 Undoubtedly, Section 3(1)(b) provides that nothing in the Act shall apply to buildings which are used ‘principally’ for specific purposes, including among them, ‘charitable purposes’. The expression “principally” conveys the meaning of that which is the dominant purpose. The interpretation placed by the two-Judge Bench on the expression “principally used for charitable purposes” does not call for interference in view of the statutory language used in Section 3(1). Principal use refers to the dominant substantive use as distinguished from an ancillary use.

10 The Explanation goes to indicate that ‘charitable purposes’ includes and is, therefore, not confined to the relief of the poor and free medical relief. Consequently, the decision in ***SH Medical Centre Hospital*** (supra) to the extent of the interpretation which is placed on the Explanation to Section 3(1)(b) of the Kerala Building Tax Act 1975 does not correctly reflect the position in law which is clarified above. The decision in ***SH Medical Centre Hospital*** is, therefore, overruled to the above extent.

11 In the present case, the Division Bench of the Kerala High Court, while disposing of the Writ Appeal, has relied only on the decision of the two Judge Bench of this Court in ***SH Medical Centre Hospital*** (supra). The impugned judgment of the Division Bench is extracted below :

“The issue raised in this writ appeal concerning the claim of the appellant for exemption from Building Tax levied under the Kerala Building Tax Act, 1975 is fully covered against it by the judgment of the Apex Court in *S.H.Medical Centre Hospital v. State of Kerala* [2014 (1) KHC 222]. This being the factual position, we do not see any merit in this appeal.

Appeal fails and it is dismissed accordingly.”

12 Since the position in regard to the interpretation of the provisions of the Explanation to Section 3(1) of the Kerala Building Tax Act 1975 has been clarified above, we are of the considered view that the impugned judgment of the High Court dated 18 July 2016 should be set aside and the Writ Appeal be restored to the file of the High Court for a decision after keeping open the factual analysis based on the interpretation of Section 3(1).

13 Writ Appeal No 1386 of 2016 in Writ Petition (Civil) No 20448 of 2016 is accordingly restored to the file of the Kerala High Court for disposal in view of the above interpretation.

14 The reference is answered in the above terms. The appeal is accordingly disposed of.

15 Pending applications, if any, stand disposed of.