Opinion No 1149

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

JOSEPH M. BURTON
CLERK OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
TAX DIVISION

JUL 20 1977

FILED

SIVANANDA YOGA VEDANTA CENTER, INC., Petitioner	
v.	Tax Docket No. 2342
DISTRICT OF COLUMBIA, Respondent	

MEMORANDUM OPINION

Petitioner in this case, Sivananda Yoga Vendenta Center, Inc. (hereinafter referred to as the "Center"), is appealing from an assessment of real property taxes for fiscal years 1975 and 1976 upon Lot 40 in Square 158, the premises being known as 1705 N Street, N.W., on the grounds that the property is tax exempt. This matter was tried by the Court on September 13, 14 and 15, 1976. Thereafter, both parties submitted post-trial memoranda of law and the Court heard oral arguments after several continuances on June 30, 1977.

Petitioner is a corporation organized under the laws of the District of Columbia with its principal place of business located at 1705 N Street, N.W. It was incorporated on August 17, 1973. The real property in question was purchased by petitioner on or about August 12, 1974, and a deed therefor recorded in the Office of the Recorder of Deeds on or about September 16, 1974. All District of Columbia real property taxes assessed against the property have been paid for fiscal year 1974. In November, 1974, the District of Columbia Department of Finance and Revenue

sent petitioner a notice of tax assessment for fiscal year 1975 in the amount of $1,346.90. On July 1, 1975, petitioner was sent a notice of assessment for fiscal year 1976 in the amount of $1,349.86. These are the amounts which are in controversy.

On March 12, 1975, petitioner, through its representative Michael Cohen, mailed a letter to the Department of Finance and Revenue requesting an exemption from real property taxes for fiscal year 1975 and subsequent years. By letter dated August 19, 1975, Kenneth Back, Director of Finance and Revenue, denied the request for exemption. This decision was made following the recommendation of Lawrence Woodwell, Supervisor, Real Property Assessment Review Section, and with the concurrence of Donald R. Beach, Acting Associate Director, Assessment Administration. Petitioner then filed the present action on October 15, 1975, seeking an exemption from real property taxes for the building located at 1705 N Street, N.W., and requesting the Court to revoke the tax assessments for fiscal years 1975 and 1976.

The issues which this Court must determine are (1) whether petitioner is a "religious corporation or society" within the meaning of D.C. Code 1973, §47-801a(n) and (2) whether the building on Lot 40 in Square 156 known as 1705 N Street, N.W., is "primarily and regularly used for religious worship, study, training, and missionary activities." Before considering these questions, the Court will address itself to respondent's motion to dismiss with reference solely to the year 1975.

The District of Columbia has moved to dismiss petitioner's action with respect to the real estate tax assessment for fiscal year 1975 on the ground that the petition was not filed within six months after the date of the assessment in accordance with D.C. Code 1973, §47-2403.

The facts relied upon by the District in support of its motion to dismiss the petition as it relates to the real property assessment for 1975 can be briefly stated. Petitioner was mailed a tax bill which constituted the notice of assessment for real estate taxes for fiscal year 1975 on November 1, 1974. On October 15, 1975, petitioner filed its petition in the Tax Division of the Superior Court, well beyond the six-month limitation period provided for in §47-2403. Petitioner, on the other hand, essentially argues that it was misled by the Department of Finance and Revenue, to its detriment, to understand that an administrative review was the first step in obtaining an exemption, and that it was to await the administrative decision before pursuing any further remedies in the Superior Court.

The appeal procedure, relevant to the real estate tax assessment at issue, is contained in D.C. Code 1973, §47-2403, which provides in pertinent part:

> Any person aggrieved by any assessment by the District of any personal-property * * * taxes, or penalties thereon, may within six months after payment of the tax together with [illegible] Court [illegible]. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect to the taxes. * * * [Emphasis supplied.] 1/

1/ Since petitioner in this action is protesting the assessment of an allegedly exempt property, D.C. Code [illegible] applies. [illegible] v. District of Columbia, [illegible] (D.C. App. 1975).

This statute has recently been interpreted by our Court of Appeals. In National Graduate University v. District of Columbia, 346 A. 2d 740, 742 (D.C. App. 1975), the court held that, since §47-2403 provides that the mailing of a statement of taxes due constitutes notice of assessment, the six-month period within which an appeal must be taken begins to run from the mailing of the notice. The court further held in National Graduate University that the timely filing of a petition is jurisdictional in nature and not merely a statute of limitations which could be waived if not asserted as an affirmative defense. 346 A. 2d at 743. Earlier this year, the Court of Appeals held that in cases involving the assessment of non-exempt real property, the six-month period for filing an appeal begins to run from the date of the assessment, not from the date of the payment of the taxes. See Donahue v. District of Columbia, 368 A. 2d 1147, 1148 (D.C. App. 1977).

In the present action, the statement of taxes due was mailed by the Department of Finance and Revenue to petitioner on November 1, 1974. The petition was not filed until October 15, 1975. Therefore, the petition, having been filed more than six months after a notice of assessment was mailed to petitioner, was not in compliance with the requirements of D.C. Code §§47-801e and 47-2403,

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1/ (Continued from previous page)
Section 47-801e provides:

> Any institution, organization, corporation, or association aggrieved by any assessment of real property deemed to be exempt from taxation * * * may appeal therefrom to the Superior Court of the District of Columbia in the same manner and to the same extent as provided in sections 47-2403 and 47-2404: Provided, however, That payment of the tax shall not be prerequisite to any such appeal.

and under the authorities cited above, this Court lacks jurisdiction to determine the issues with respect to fiscal year 1975. Petitioner, however, seeks to avoid the consequences of the untimeliness of its petition on the ground that the respondent is estopped from relying on the jurisdictional limitation in §47-2403. In support of its argument, petitioner stated that, by letters dated March 12 and March 15, 1975, it applied to the Department of Finance and Revenue for exemption from real estate taxes pursuant to D.C. Code 1973, §47-801a(n). The Department acknowledged the application by letter dated March 28, 1975, stating that it would be glad to review the application. The application for exemption was later denied by the Department on August 19, 1975, and petitioner was then notified that it could appeal from the decision to the Superior Court pursuant to D.C. Code 47-801e. Based upon the foregoing, petitioner argues that, because it relied, to its detriment, upon the statements and actions of the Department informing that the administrative action was the only action it must take, the jurisdictional bar is inapplicable. In any event, petitioner alternatively argues that it should not be denied the right to seek an exemption in a year for which an administrative review is being considered.

Although the Court views petitioner's arguments with some degree of sympathy, we must reject them. In order to establish the requisite facts demonstrating estoppel and to avoid the jurisdictional defect inherent in the untimely filing of the petition, petitioner must show that its failure to timely file was the result of an inexcusable

delay in rendering a decision or an alleged erroneous decision by the District of Columbia which lulled the petitioner into inaction. It has long been established that conduct designed to induce inaction on the part of a plaintiff will generaly estop a defendant from relying upon a limitation statute. See Hornblower v. George Washington University, 31 U.S. App. D.C. 64, 75 (1908). The same principles we believe apply where, as petitioner here, a plaintiff seeks to avoid a time limitation which would preclude a court from assuming jurisdiction.

The record is clear that the District took no action, in the form of either an erroneous decision or in any inexcusabl delay, which contributed to the untimely filing of the petition for fiscal year 1975. The District simply informed petitioner that, if it desired an exemption from real estate taxes, it would have to submit a request in writing. Once the letter was written, the District indicated that the application would be routinely reviewed. The District was under no obligation to inform the petitioner that, in addition to taking these administrative steps, it was also required to file an appeal in Superior Court before May 1, 1975. On the contrary, petitioner had the burden of determining for itself when and how an appeal must be taken from a final assessment under our District of Columbia tax procedures. Moreover, it appears to the Court that petitioner was unaware of the six-month limitation period and thus could not have been "lulled" into not complying with it.

The Court further finds, under the particular circumstances of this case, no merit in the argument that the filing of an application for an exemption from the payment

of real estate taxes pursuant to D.C. Code §47-301a(n) in any manner caused the tolling of the six-month limitation period. It has been held that the District of Columbia taxing authorities have no power to exempt property from taxation where the application for exemption was filed after the property has been assessed for that year. Congregational Home of the District of Columbia v. District of Columbia, 92 U.S. App. D.C. 73, 76, 202 F. 2d 808, 811 (1953). The court there further stated:

> The practice of applying to the Commissioners after July first for the exemption of real estate which has been administratively determined to be taxable and has been finally assessed * * * finds no support in the statutes. After the process of assessment has been completed, -- that is, after the equalized valuations of all taxable property have been approved by the Commissioners -- the only relief available to a taxpayer, either from an incorrect valuation or from the wrongful assessment of property thought to be exempt, is by appeal to the Board of Tax Appeals [now the Tax Division of this Court]. Id.

The notice of assessment of real property taxes for fiscal year 1975 was mailed to petitioner on November 1, 1974. Petitioner's letters regarding its application for exemption from real property taxes were dated March 12, 1975 and May 15, 1975 (see Exhibits D and E to petition). Thus, although the letters did not specifically so state, petitioner by its letters was applying near the end of fiscal year 1975 for an exemption effective that year, as well as in future years. Under the authority of Congregational Home, supra, it is clear that the District of Columbia could not have granted an exemption to petitioner for 1975 and that petitioner's only remedy was, as provided in D.C. Code §47-2403, to petition this Court within six months of the date of assessment. Cf.

Howard University v. District of Columbia, Tax No. 2319, slip op. at 7-9 (Super. Ct. D.C. March 12, 1976), where this Court announced an exception to this general rule where an institution has specifically been granted an exemption by statute. See D.C. Code 1973, §47-811.

Accordingly, since the petition here was filed beyond the six-month period provided in §47-2403, this Court finds that it lacks jurisdiction to hear and determine the subject matter of the petition as it relates to fiscal year 1975.

We now turn our attention to the real estate taxes paid by petitioner for fiscal year 1976. Petitioner maintains that it is a "religious corporation or society" within the meaning of D.C. Code §47-801a(n) and that the Center is "primarily and regularly used for religious worship, study, training and missionary activities." It contends, however, that the activities of the Center need only meet one of the requirements of the second part of the test in order for it to qualify for exemption. It further argues that the followers of Yoga do profess a belief in a supreme being or deity and the fact that its members and believers are not required to forsake participation in other religious organizations is an insignificant factor in our determination of the Center's qualification for exemption. Petitioner contends that the fundamental practices and beliefs of Yoga are not in issue. Rather, the question is whether, to its members, the carrying out of those beliefs and practices is a religious activity in the sense intended by Congress when it granted an exemption for such purposes.

Respondent's arguments focus mainly on the second part of the test, namely, whether the Center is "primarily and regularly used for religious worship, study, training and missionary activities." The District of Columbia contends that, even assuming that petitioner in the manner in which it practiced and followed the philosophy at the Center constitutes a "religious society," the Center was not used "primarily and regularly" for the purposes enumerated in the statute. It argues that all of the activities -- worship, study, training and missionary work -- must be present in order for the Center to achieve exempt status. It bases this argument on its reading of the evidence to show that three-quarters of the building is used for purposes other than what must be demonstrated for the granting of an exemption. Respondent, however, by no means concedes that petitioner is a "religious corporation or society." It argues that the beliefs and practices of Yoga rise only to the level of a philosophy, through which its followers lead a life characterized by prayer, chanting, meditation, physical exercise and dietary restrictions in order to further their beliefs. Such philosophical techniques, respondent contends, although possibly an aid to a better understanding of religion, are not religious activities in and of themselves, and thus Yoga cannot be considered a religion nor can the Center be considered a "religious society."

At the outset we feel it necessary to state that this Court is not required to determine whether petitioner is broadly, in an ecclesiastical sense, a religious

society or church. Rather, we need only focus on the narrow question of whether, under this particular statute, petitioner qualifies for tax exemption.[2] To litigate the issue whether a given group or a particular set of beliefs is or is not religious, is an extremely delicate task.[3] Although tax exemption provisions must generally be strictly construed against the taxpayer,[4] to construe the particular tax exemption with which we are concerned so strictly that unorthodox or minority forms of worship would be denied exemption benefits granted to those organizations which conform to the majority beliefs might raise constitutional problems.[5] For implicit in such a denial would be the consideration of the merits or fallacies of a religion and, in some circumstances, a comparison of the beliefs and practices of newly

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2/ See, e.g., Washington Ethical Society v. District of Columbia, 101 U.S. App. D.C. 371, 373, 249 F. 2d 127 (1957). The court was concerned there with D.C. Code §§47-801a(m) and (n) and whether petitioner was a "church" or "religious society." It held that the Ethical Society qualified as a "religious corporation or society." Our Court of Appeals has said that the two Code sections, §§47-801a(m) and (n), are not mutually exclusive, but are complementary. See District of Columbia v. Maryland Synod of the Lutheran Church, 307 A. 2d 735, 736 (D.C. App. 1973).

3/ See Founding Church of Scientology v. United States, 409 F. 2d 1146, 1160 (D.C. Cir. 1969). The court there held that a prima facie case was made out by Founding Church that Scientology was a religion. It was incorporated as such in the District of Columbia, it had licensed ministers with authority to marry and conduct burial services, and its fundamental writings contained a general account of man and his nature which were comparable in scope and content to those of recognized religions. Id. See also United States v. Kuch, 288 F. Supp. 439, 443 (D. D.C. 1968).

4/ See Hebrew Home For The Aged v. District of Columbia, 79 U.S. App. D.C. [illegible], [illegible], [illegible] F. 2d 575 (1944); [illegible] of Humanity v. County of Alameda, 153 Cal. App. 2d 675, 315 P. 2d 394, 396 (1957).

5/ See Washington Ethical Society v. District of Columbia, 101 U.S. App. D.C. 371, [illegible] F. 2d 127; [illegible] Humanity v. County of Alameda, 153 Cal. App. 2d 675, 315 P. 2d at 396.

organized religions with those of the more-established ones. A court should not praise or condemn a religion no matter how fanatical or preposterous it may seem.[6]

By raising these points we do not intend to imply that a court may never examine or question the basic tenets and beliefs of an organization which claims exempt status. We merely note that in this case we do not intend to probe the underlying beliefs and practices of Yoga in general, or the Sivananda Yoga Center in particular to determine their validity or sincerity. The Court therefore accepts the testimony and evidence presented and concludes that the particular forms of the Yoga philosophy followed by petitioner, the essence of which derives from the Hindu religion and the basic scriptures -- the Vedas or Vedantas, the Upanishads and the Bhagavad Gita, which is considered the foremost of all scriptures -- are religious in nature. A few references to the evidence demonstrate the validity of our conclusion. The Vedas, believed to be given to man directly by God, describe the nature of God and the nature of the universe and are the equivalent of the Bible for all the Hindu religions. These and the other scriptures referred to deal basically with man's relationship to God and the way of achieving some type of communion with God.[7] In fact one definition of Yoga offered at the trial was "to live in God, to commune with God" (Transcript, September 13, 1976, at

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6/ See [illegible], Inc. v. United States, 372 F. Supp. 770, 776 (E.D. Cal. 1974).

7/ Transcript, September 13, 1976, at 9, 10, 13, 14, 17, 18 20 (testimony of Michael Cohen, also known as Krishna Kesava Chaitanya).

23, 28-29). Another was that Yoga is the arresting of the mental turmoils of the mind (Transcript, September 15, 1976, at 11). The followers of Yoga consider Swamii Sivananda as their spiritual leader. It is believed that when living he attained the full unification of truth, existence, realization and knowledge of God. He founded the mother organization, the Divine Life Society, in India. Swamii Vishnu Devananda is presently the foremost teacher of Yoga and is also believed to have achieved a certain degree of the ultimate realization (Transcript, September 13, 1976, at 12-13). Certain of the aspirants of Yoga take the vow of celibacy, as well as other vows, during the period of time they are studying (Transcript, September 13, 1976, at 4). Furthermore, the Hindu religion, in which all Yoga finds its basic tenets, professes a belief in a universal being, supreme god-head, or absolute consciousness (Transcript, September 13, 1976, at 14, 24).[8]

We could cite further evidence to support our decision that Yoga, in its true historical and philosophical sense, is basically religious in nature. However, we find it unnecessary to do so. Our finding applies equally to all branches of Yoga, Bhakti, Jnana, Karma, and Raja Yoga, in which category Hatha Yoga falls, as long as they are practiced within the traditional bounds of Yoga which we briefly discussed above (Transcript, September 13, 1976, at 24-26). Lest there be any misunderstanding, we wish

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8/ Under the test used by one court in a comprehensive opinion on this subject, the belief or nonbelief in a Supreme Being was unimportant. Fellowship of Humanity v. County of Alameda, 153 Cal. App. 2d 673, 315 P. 2d 394, 406. This view is apparently true in our jurisdiction. See Washington Ethical Society v. District of Columbia, 101 U.S. App. D.C. 371, 249 F. 2d 127.

to emphasize at this point, and to make it perfectly clear that we do not consider the practice of Raja or Hatha Yoga, when divorced from a religious context and limited merely to physical exercise, as being religious.[9] Our concern is whether petitioner follows the practices and beliefs of Yoga in the traditional meaning of this "unorthodox" religious organization. If so, we believe that petitioner satisfies the first portion of §47-801a(n) by being a "religious corporation or society."

The evidence shows that the Sivananda Yoga Vedanta Center was founded by Swamii Vishnu Devananda and has a spiritual link with the mother organization in India, the Divine Life Society (Transcript, September 13, 1976, at 15). We find that the daily activities at the Center conform to the fundamental beliefs and practices of Yoga as originally taught by the ancient writers and as it evolved from Hinduism through Swamii Sivananda (Transcript, September 15, 1976, at 14, 21). There is a compulsory morning meditation at around 6:00 a.m., which is a silent type of communion using different techniques of meditation. Following this period of meditation, which lasts approximately one hour, those present at the Center[10] engage in

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9/ This conclusion is fully supported by the evidence. See Transcript, September 15, 1976, at 16, 34, 36 (testimony of Professor Alfred Hiltebeitel). Professor Hiltebeitel was qualified as an expert witness on the subject of Eastern religions.

10/ During those periods in question, there may have been as many as eight or nine persons residing at the Center, some of whom were members of the staff. However, the activities were open to the public as well. Transcript, September 13, 1976, at 32 (testimony of Michael Cohen).

chanting of Hindu mantras for another 45 minutes.[11/] After chanting, the members either read spiritual literature, write or do special exercises, i.e., Hatha Yoga. Once these morning activities have been completed, the members start their administrative tasks and manual chores, such as cleaning, cooking, attending to records, or anything else necessary to maintain the Center. During the course of the day, classes are conducted in Hatha Yoga by specially trained teachers. These are open to the public and include instruction in physical exercises, breathing exercises, meditation techniques, and philosophy. On occasion classes were held outside the Center, for example, at the Department of Transportation or at St. Elizabeth's Hospital. In addition to the classes in Hatha Yoga, classes are conducted which deal strictly with meditation. There are also special Sunday services at the Center attended on the average by 15 persons. This schedule is repeated daily and can be described as being fairly well structured and somewhat rigorous compared to the practices of several more-established religious organizations.[12/] On a more familar note, the Center observes many of the traditional Hindu religious holidays, as well as Christmas and other Christian religious holidays (Transcript, September 13, 1976, at 79). Based upon the above evidence and the record as a whole, we conclude that petitioner is a "religious

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11/ Daily chant sheets were introduced as petitioner's Exhibits 1, 2 and 3.

12/ See Transcript, September 13, 1976, at 29, 33, 55, 56, 60, 61 and 73 (testimony of Michael Cohen). Although Mr. Cohen testified to activities at the Center up until the time he left in September, 1975, Lakshmi Devi testified that these activities continued as described throughout the period with which we are concerned, fiscal year 1976.

corporation or society" within the meaning of D.C. Code §47-801a(n).[13]

Turning to the second aspect of the test petitioner must satisfy in order to gain an exemption from real property taxes, we must determine whether the Center is "primarily and regularly used for religious worship, study, training and missionary activities." In Fellowship of Humanity, supra, the court was interpreting a provision of the state constitution which required that before property received an exemption from the payment of city and county property taxes, it must be demonstrated that the property was used "solely and exclusively for religious worship." The court held that the property in question met this test, which is stricter than the test in §47-801a(n), even though the building was often used for discussions on political and economic topics of current interest, social gatherings, and utilized by other groups for dances, dinners, and meetings.[14] Under a more liberal test and with far less unrelated uses of the building present here than were present in Fellowship of Humanity, this Court reaches the same conclusion that was reached there, that the incidental uses of the Center, which were emphasized by respondent, and the general floor plan of the building does not disqualify it from real property tax exemption.

13/ D.C. Code §47-801a(n) was designed to include those buildings which are entitled to exemption because of the character of the work carried on within. An example of this is a house of study at Catholic University. See H.R. REP. NO. 2635, 77th Cong., 2d Sess. (1942); Calvary Baptist Church Education Assn. v. District of Columbia, 81 U.S. App. D.C. 330, 331, 156 F. 2d 327 (1946); District of Columbia v. Maryland Synod of the Lutheran Church, 307 A. 2d 735, 736 (D.C. App. 1973).

14/ 153 Cal. App. 2d 673, 315 P. 2d at 397.

Since the building serves the same place and function in the lives of the members of the Center as churches or other centers do in more-established religions, to require that every room in it be used for religious worship or study would be looking at this particular organization too severely. To do so might raise some of the problems which we referred to earlier in this opinion with respect to religions.

We therefore conclude, again based on the record as a whole, that the Center was, during fiscal year 1976, "primarily and regularly used for religious worship, study, training and missionary activities" within the meaning of §47-801a(n). In so concluding, we do not decide whether or not each and every one of these activities must be present before an exemption would be granted for the use of a building.[15/] We find that petitioner has made out a prima facie case that, in one way or another, all such activities are present at the Center. Nor have we based our decision on the fact that petitioner has previously been granted a federal exemption from income tax and an exemption in the District of Columbia from paying sales and use tax, income and franchise taxes.[16/] Some of these exemptions, of course, may be obtained merely by filing a self-serving application.

15/ In Calvary Baptist Church v. District of Columbia, 81 U.S. App. D.C. 330, 158 F. 2d 327, the court loosely and perhaps unintentionally referred to the activities enumerated in §47-801a(n) in the disjunctive.

16/ At oral argument, respondent stated that petitioner's exemption from sales and use taxes was erroneously granted.

For the reasons stated, we conclude that the petitioner is entitled to an exemption from the real property tax assessment on the property located at 1705 N Street, N.W., for the fiscal year 1976.

Accordingly, it is this 26th day of July, 1977,

ORDERED that the respondent's motion to dismiss as to fiscal year 1975 be and the same hereby is granted, and the petition must be dismissed as to that fiscal year, and

FURTHER ORDERED that the real property tax assessment on the property located at 1705 N Street, N.W., for the fiscal year 1976 be and the same hereby is abated and cancelled.

FRED B. UGAST
Judge

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