

Opinion
No. 1150

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

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

RELIGIOUS OF THE SACRED HEART,)
WASHINGTON PROVINCE, INC.,)

SEP 16 1977

Petitioner)

FILED

v.)

Docket No. 2258

DISTRICT OF COLUMBIA,)

Respondent)

OPINION AND ORDER

This case came before the Court for a hearing and trial on petitioner's request that the real property it owns and which is located at 1201 Perry Street, N.E. in the District of Columbia is exempt from real property taxes under D.C. Code 1973, §47-801a. Petitioner seeks to have the property declared exempt and to have the Court order a refund to the petitioner of any real estate property taxes paid subsequent to the beginning of Fiscal Year 1975.

The court has jurisdiction over this case pursuant to D. C. Code 1973, §11-1201.

I

After considering the testimony and evidence offered in this case together with the arguments of counsel for the parties, the Court makes the following findings of fact:

1. The property involved in this case is located at 1201 Perry Street, N.E. in the District of Columbia, and is legally described as Lot 52, Square 3926. (Pet. Ex. 6.)

2. Petitioner requested a tax exemption on the subject property in January 1974 and that request was denied by respondent in February 1974. Petitioner requested reconsideration of the decision denying exempt status and that request was denied on March 21, 1974.

3. The petitioner is an organization not organized or operated for private gain. Its Articles of Incorporation were filed under the District of Columbia Non-Profit Corporation Act (D.C. Code 1973, §29-1001, et seq.). It is still in good standing as a District of Columbia non-profit corporation and is listed as an exempt organization by the Internal Revenue Service under a group ruling issued by that service in 1974. That ruling was made pursuant to Internal Revenue Code of 1954, Section 501(c)(3). Respondent concedes that the petitioner is a non-profit organization.

4. The petitioner and the members of petitioner's corporation administer the Washington Province of the Society of the Sacred Heart. That Province, which stretches from Massachusetts to Florida, consists of one college, four schools, and various houses including houses of study, pre-retirement houses and retirement houses. The Province numbers approximately 165 religious or sisters.

5. The community of nuns using the property in question is a religious community and each nun is a member of that religious community. The nuns living on the property at the time of trial were Sister Bush, Sister Murphy, Sister Duffy,

Sister Santos, and Sister Hupp. The Sisters carry out daily religious services and the Blessed Sacrament is kept in the house which is quite unusual except at religious houses. Members of other religious groups and members of the local community, on a periodic and regular basis, join with the Sisters for other religious services, including the Holy Sacrifice of the Mass.

6. Each Sister using the property has taken a vow of poverty. At the time of the trial two Sisters were earning a salary, Sister Duffy was paid less than \$9,000 per year and Sister Santos less than \$4,000. All earnings and other funds received by any Sister are immediately turned over to the Society. A budget is prepared for the community by the Sisters in consultation with the provincial administration. Funds are sent monthly from the Provincial Headquarters to the community to cover its expenses.

7. The Society of the Sacred Heart has a rule that its members, except in unusual cases, must live in communities.

If the community at 1201 Perry Street, N.E. did not exist, it would pose a much greater problem for the sisters using the property to carry out their current work.

8. Sister Bush is a member of the Society of the Sacred Heart and occupies the property in question. She is an administrator in the Society and a member of the Provincial Team, the highest governing body of the Province. In this function she is required to review reports, write reports

and consider all the activities of the Order in the Province in its relationship with other Provinces and the Headquarters of the Society in Rome. Meetings concerning provincial administration are held in the building in question. Sister Bush is also the Director of Pre-Retirement and Retirement, a staff position in the administration of the Province. Her duties in this position include research and collection of materials on those subjects, preparing reports for her Order, consulting on those subjects with other Provinces of her Order and other Orders, running workshops on those subjects and counseling individual nuns on their career development. Some meetings and workshops dealing with Pre-Retirement and Retirement are held at the building in question. Sister Bush is the first incumbent of the position of the Director of Pre-Retirement and Retirement; she actually created the position. That office has been established in Washington because of the resources on those subjects in the National Capitol Area and Sister Bush has her office and carries out the major portion of her activities on the subject property.

9. Sister Murphy is a member of the Society of the Sacred Heart and also occupies the subject property. She and 18 other nuns were students in the Pastoral Ministry Program at Trinity College at the time of the trial. This certificate program involves an academic part and a training part; the academic part involves course work in such subjects as Moral Theology and Scripture and the training part for Sister Murphy is as a

practicum at Walter Reed Army Hospital in which, under supervision, she ministers to the sick. Sister Murphy prepares for her study and training on the subject property and she is a member of the New York Province of the Society of the Sacred Heart.

10. Sister Duffy is a member of the Society of the Sacred Heart and occupies the property in question. She is involved in teaching and missionary activities. She is a member of the faculty of the Catholic University of America and teaches in the American Language Institute of that University. She also teaches in the Master of Arts in Teaching Program at Trinity College. She teaches linguistics, English as a foreign language and the teaching of English as a foreign language. She was a missionary in Brazil for many years and remains involved in missionary activities. At the time of the trial she was the Chairman of the Washington Mission Symposium and as such planned its programs and kept its records. She counsels persons going to the missions and is active in the program to send books to foreign missions. She sees students, prepares her classes, runs the Washington Mission Symposium and counsels persons going to missions on the property in question.

11. Sister Santos is a member of the Society of the Sacred Heart and also occupies the subject property. In religious orders, service functions are generally carried out by members of the Order. Sister Santos has been in such a service function throughout her time in the Society and is assigned to be one of the Sacristans at the National Shrine of the Immaculate Conception.

12. Sister Hupp is a member of the Society of the Sacred Heart and occupies the property. She is a retired Sister who does some volunteer charitable work for which she is paid an amount which does not cover her expenses. Before her retirement in 1973 she was for forty years a teacher and administrator of the schools for the Society.

13. The Department of Finance and Revenue of the District of Columbia is charged with determining whether to recognize exemptions on real property. In the instant case, the Tax Assessor who was in charge of investigating the use of the property and making a recommendation as to whether that use merited granting an exemption visited the property once unannounced. Finding no one there he briefly looked in a window but made no further examination of the property. On the following day he spoke on the telephone with one of the Sisters for two or three minutes. During the course of that conversation he asked no questions in terms or words of D. C. Code 1973, §47-801a. He made no further examination of the use of the building.

II

It is important to note when discussing any request that property be determined to be exempt that exemptions from taxation in the District of Columbia are strictly construed against those claiming the exemption. Washington Chapter of American Institute of Banking v. District of Columbia, 92 U.S. App. D.C. 139, 203 F.2d 68 (1953); Hebrew Home for the Aged v. District of Columbia, 79 U.S. App. D.C. 64,

142 F.2d 573 (1944); Combined Congregations of District of Columbia v. Dent, 78 U.S. App. D.C. 254, 140 F.2d 9 (1943).

See also, District Unemployment Compensation Board v. Security Storage Company of Washington, 365 A.2d 785, 790, n. 9 (D.C. App. 1977).

The petitioner claims that the subject property is exempt under Section 47-801a(n) but it argues in the alternative that, if not exempt under that section, then it is entitled to either a full or partial exemption under a number of other sections including Sections 47-801a(h), (j), (m), (o), (q) and (r)(1).

The Court concludes that only those claims made under subsections (n), (q) or (r)(1) merit consideration. However, before discussing those claims, the Court will briefly dispose of those contentions it finds to be totally without merit.

Petitioner argues that at least a portion of the property is entitled to an exemption under Section 47-801a(h). That section exempts buildings operated by institutions not organized for private gain and which are used "for purposes of public charity principally within the District of Columbia". See, e.g., District of Columbia v. Friendship House Assoc., 91 U.S. App. D.C. 137, 198 F.2d 530 (1952); Catholic Home for Aged Ladies v. District of Columbia, 82 U.S. App. D. C. 195, 161 F.2d 901 (1947); District of Columbia v. Linda Pollin Memorial Housing Corp., 313 A.2d 579 (D.C. App. 1973). Petitioner argues that the fact that Sister Hupp, a retired religious, lives in the house supports the claim since by allowing her to live there the

petitioner relieves the District of Columbia of the burden of furnishing her support. There are no facts however which even suggest that the subject property was purchased for or is maintained in order to provide a home for retired sisters. On the contrary, the fact is that Sister Hupp, who is still somewhat active, just happens to live there much like a retired or elderly person living with a member of his or her family. Such a family would not be entitled to an exemption on its property merely because the retired person lives there; nor is petitioner entitled to such an exemption.*/

The petitioner also contends that the property is exempt under Section 47-801a(j). That section exempts buildings "belonging to and operated by schools, colleges or universities" not organized for private gain and which embrace the "generally recognized relationship of teacher and student". See, Washington Chapter of the American Institute of Banking v. District of Columbia, supra. The simple answer to this contention is that the petitioner is not a school, college or university. The request for exemption under this section must also be denied.

Petitioner next proffers that it would be entitled to an exemption under Sections 47-801a(m) and (o) on the theory that Sister Santos is a Sacristan at the National Shrine of the Immaculate Conception and that a Sacristan is frequently a brother who would live at a pastoral residence and that the only reason Sister Santos is not living at such a residence

*/ This assumes that a retired family could meet other requirements of Section 47-801a(h).

is that she is a woman and is required to live in her own community. Again, there is a single answer to this claim; although the National Shrine may fall within the purview of Section 47-801a(m) as a church, it is clear that petitioner does not qualify as a church, therefore it cannot be exempt under that section. Similarly, it cannot claim an exemption under Section 801a(o) since that exemption is only given for one pastoral residence owned by a church and actually occupied by the pastor, rector or minister of that church. It is obvious that the subject property does not qualify for the exemption.

III

The petitioner argues with great force that the property is entitled to exemption under Section 47-801a(n). That section grants an exemption for: "Buildings belonging to religious corporations or societies primarily and regularly used for religious worship, study, training, and missionary activities". See Calvary Baptist Church Extension Assoc. v. District of Columbia, 81 U.S. App. D.C. 330, 158 F.2d 327 (1946); District of Columbia v. Maryland Synod of Lutheran Church in America, 307 A.2d 735 (D.C. App. 1973).

In order to come within the exemption created by this section, the petitioner need only satisfy two conditions. First, the petitioner must be a religious corporation or society. This petitioner easily meets this requirement. Second, the property must primarily and regularly be used

for religious worship, study, training, and missionary activities. 81 U.S. App. D.C. at 331, 158 F.2d at 328. This requirement presents a serious obstacle to the petitioner's request for exemption.

The petitioner argues that the use of the property meets the second condition in that the property is regularly used for worship since the Sisters regularly carry out religious services there and the Blessed Sacrament is kept in the house for the use of the Sisters. It is also argued that Sister Murphy is in a pastoral ministry program at Trinity College where she is "studying" and "training" for a new ministry. Last, they note that Sister Duffy is also active in teaching and that she sometimes sees students, prepares her classes, runs the Washington Mission Symposium and counsels persons going to missions on the subject property.

Notwithstanding the above, it seems clear that the "primary and regular" use of the building is not for religious worship, study, training or missionary activities but rather as a residence for the five sisters living on the property. As such, this case is clearly distinguishable from Calvary Baptist Church Extension Assoc. v. District of Columbia, supra, and District of Columbia v. Maryland Synod of Lutheran Church in America, supra, where the property was primarily and regularly used for religious worship, training, study and missionary activities. In the former case it was merely the extension of a church and in the latter case the property was actually

occupied by a church and it was owned by a religious corporation or society. Here, the petitioner in requesting the exemption really focuses not upon the use of the property but the activities of the various Sisters occupying the house. If the law permitted a liberal interpretation of the statute the petitioner might qualify for the exemption but, as has already been noted, such exemptions are strictly construed against the person or persons claiming the exemption. While the Sisters conduct religious services in the house it appears that they would do the same in any religious community. The building may be used for religious worship and services from time to time but that is not its primary and regular function.

There is no evidence that the building is primarily or regularly used for study, training or missionary activities. True it may be that the individual Sisters may be engaged in such activities but, as indicated above that is not the primary purpose of the property.

The exemption under Section 47-801a(n) was created when Congress recognized that there were certain "houses of study" surrounding the Catholic University of America which formed an integral part of the university but which were not owned by that institution. Since they were not schools or universities they were not exempt under Section 47-801a(j) and since they were not churches they could claim no exemption under Section 47-801a(m). Those houses of study were compared with the various colleges or houses of study grouped around such famous

institutions as Oxford and Cambridge Universities in Great Britain. H.R. Rep. No. 2635, 77th Cong. 2d Sess. 4-6 (1942). It was to exempt such institutions that Congress originally created the so-called "houses of study" exemption that is now Section 47-801a(n). Since the establishment of that exemption the courts have recognized that the exemption embraces more than the houses of study surrounding Catholic University. See, Calvery Baptist Church Extension Assoc. v. District of Columbia, 81 U.S. App. D.C. at 331, 158 F.2d at 328.

The petitioner does not fall within the definition of "houses of study" as described in the Legislative History of Section 47-801a(n) nor can this Court find that the property is "primarily and regularly used for religious worship, study, training, and missionary activities".

In view of the above the petitioner is not entitled to an exemption under Section 47-801a(n).

IV

Finally, the petitioner contends that the property is exempt or at least partially exempt under Section 47-801a(q). That section grants an exemption for buildings which belong to organizations which are charged with the "administration, coordination, or unification of activities, locally or otherwise, of institutions or organizations entitled to exemption under the various sections of Section 47-801a, b, and c through f.

Petitioner's request for exemption under this section is based both upon the Articles of Incorporation and the work of

Sister Bush. The petitioner administers the Washington Province of the Society of the Sacred Heart. The Court has found that that Province extends from Massachusetts to Florida and is made up of a college, schools and various houses of study and houses for pre-retirement and retirement purposes. It is the function of the petitioner to administer, coordinate or unify the activities of that Province.

The main headquarters of the Province is located in Newton, Massachusetts, but Sister Bush, who resides on the subject property, is an administrator of the Society and is also a member of the provincial team which is the highest governing body of the Province. As has been noted, she performs administrative duties for the Province and works with other Provinces in the United States and with the headquarters of the Society in Rome. Moreover, she has created the position of Director of Pre-Retirement and Retirement which is now a staff position in the Province. In this latter category, she counsels the Sisters of the Province as to retirement and career development programs. She also consults with other Provinces of the Society of the Sacred Heart concerning these matters.

Sister Bush testified that she, and the Province, decided that it was best to have the Pre-Retirement and Retirement office located in the District of Columbia because of the many resources available on that subject in the District. Most of her activities and work in this connection are performed at

her office - bedroom at the subject property.

The Court concludes that the petitioner is charged with the administration, coordination and/or unification of its colleges and schools and that it satisfies all of the essential elements of the exemption under Section 47-801a(q). See, Conference of Majority Religious Superior of Women, Inc. v. District of Columbia, 121 U.S. App. D.C. 171, 348 F.2d 783 (1965).

V

Having determined that the petitioner is entitled to an exemption under Section 47-801a(q), there remains a final question concerning whether the exemption is to include the whole of the property or only a portion thereof.

Petitioner argues that if the Court finds a portion of the property exempt then the whole of the property is exempt. (Pet. Reply Br., Part B.) On the other hand, respondent argues that the Court can find that only a portion of the property is exempt and cites in support of that argument, District of Columbia v. Young Men's Christian Assoc., 95 U.S. App. D. C. 179, 221 F.2d 56 (1955). (Resp. Br., at 11.)

The respondent is correct that the court can find a portion of the property exempt without declaring the whole exempt. In fact, such a result is suggested by the Legislative History of Section 47-801a(q). H.R. Rep. 2635, 77th Cong. 2d Sess. (1942). There, in setting forth the reasons for establishing the exemption, the Congressional Committee cited three organizations which would be entitled to an exemption under the section

including the Washington Federation of Churches and the National Catholic Welfare Association. The Committee then went on to note that the exemption would also cover: "that portion of the Methodist Building which contains the administrative offices of that church". Id. at 6 (Emphasis the Court's.) Clearly, Congress recognized that there could be an exemption on a portion of the property.

The subject property is not entitled to be declared totally exempt merely because a small portion is used for an activity that falls within an exemption. Petitioner has presented no evidence that the entire house is necessary in order to perform the administrative functions of the Society. Indeed, the primary administrative functions of the Society are performed in Newton, Massachusetts, and most of Sister Bush's work is performed in her own office - bedroom. Thus it is clear that that portion of the subject property is entitled to an exemption. Petitioner is also entitled to an exemption on the portion of the property or grounds which is reasonably necessary to carry out the activities and the programs of the exemption granted under Section 47-801a(q). D. C. Code 1973, §47-801a(r)(1). In the view of this Court that exemption would consist of one-fifth of the total property. Since there are no other guidelines which would justify a greater exemption, the Court concludes that the proper exemption to be accorded on the property in this case is one-fifth of the whole.

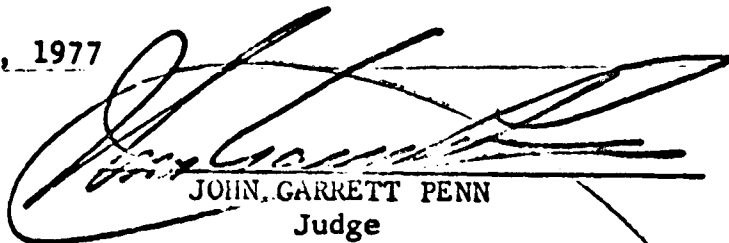
O R D E R

It is hereby

ORDERED that pursuant to this Opinion, the petitioner is entitled to an exemption amounting to one-fifth of the total property for the fiscal years in question, and it is further

ORDERED that the petitioner shall submit a proposed order within ten days consistent with this Court's Opinion and shall at that time simultaneously submit a copy of the proposed order to the respondent. Respondent shall thereafter have ten days in which to object to the proposed order or to submit a proposed order of its own. In the event the respondent does not submit a proposed order of its own or object to that order proposed by the petitioner within the ten-day period, the Court will deem it that the respondent consents to the entry of the order proposed by the petitioners.

Dated: September 16, 1977



JOHN GARRETT PENN
Judge

Mario F. Escudero, Esq.
Attorney for Petitioner

Melvin J. Washington, Esq.
Attorney for Respondent

*Copies mailed
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