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Short Form Order

SUPREME COURT - STATE OF NEW YORK
TRIAL TERM, PART 20 NASSAU COUNTY

PRESENT:
Honorable Karen V. Murphy
Justice of the Supreme Court

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In the Matter of the Application of

COMMUNITY CHURCH OF SYOSSET,

Petitioner(s),

For a Judgment pursuant to Article 78 of the C.P.L.R. annulling and setting aside a denial of real property tax exemption and directing that such petition be granted together with other relief,

-against-

THE ASSESSOR AND THE ASSESSMENT REVIEW COMMISSION,

Respondent(s).

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Index No. 11096/09

Motion Submitted: 10/5/09
Motion Sequence: 001

The following papers read on this motion:

Notice of Motion/Order to Show Cause.....X
Answering Papers.....X
Reply.....X
Briefs: Plaintiff's/Petitioner's.....
Defendant's/Respondent's.....

The petition to annul and set aside the Final Roll for the 2009/10 tax year, provide a full exemption from property taxes, refund all excess real estate property taxes paid, if any, with statutory interest, and to correct the assessment roll reflecting such correction is denied for the reasons set forth herein.

As to respondents' contention that petitioner's use of Article 78 is improper, the court finds petitioner may rely on an Article 78 proceeding to challenge the method of the real estate tax assessment herein (see ***22 Park Place Coop., Inc. v. Board of Assessors of County of Nassau***, 102 A.D.2d 893, 476 N.Y.S.2d 93 [2d Dept., 1984]).

Petitioner is a religious corporation, first organized in 1860 as the Free Church. It was incorporated as a church under the Religious Corporation Law of 1909, ch. 53, Article 8. In May, 2008, the petitioner filed for renewal of the non-profit real estate exemption pursuant to RPTL § 420-a. The petitioner failed to reflect a change on its renewal application and did not disclose that a portion of the property was rented or leased to various non-tax exempt organizations. The church's total income for 2008 was $252,907.00, of which $104,638.00 came from the rental/lease revenues. The respondents informed petitioner that based on the change of use of the property from one that was wholly exempt to one that included lease/rental income, a portion of the property would be subject to an assessment. After reviewing the taxable value for the leased portions of the property respondents determined that an assessment of 8.34% of the petitioner's property was warranted.

When a municipality withdraws a tax exemption for real property owned by a non-profit organization, it bears the burden of demonstrating that the property is no longer entitled to the exemption and withdrawal was warranted and rational (***Health Ins. Plan of Greater New York v. Board of Assessors of Town of Babylon***, 44 A.D.3d 1044, 845 N.Y.S.2d 98 [2d Dept., 2007]). While an exemption statute is to be construed strictly against those arguing for non-taxability, the interpretation should not be so narrow and literal as to defeat its settled purpose, which is the encouraging, fostering and protecting religious and educational institutions (***People ex rel Watchtower Bible and Tract Soc., Inc. v. Haring***, 8 N.Y.2d 350, 170 N.E.2d 677, 207 N.Y.S.2d 673 [1960]); ***Newsday v. Town of Huntington***, 82 A.D.2d 245, 441 N.Y.S.2d 689 [2d Dept., 1981]).

RPTL § 420-a(1)(a) provides an exemption for taxation for property owned by a religious corporation and "used exclusively" for carrying out the purposes of the religious corporation; the term "exclusively" in this context means "principally" or "primarily" (***Matter of Yeshivath Shearith Hapletah v. Assessor of Town of Fallsburg***, 79 N.Y.2d 244, 590 N.E.2d 1182, 582 N.Y.S.2d 54 [1992]). It is not disputed that the property in question is owned by a religious corporation, however the parties dispute whether the property is used exclusively for carrying out the purposes of the religious corporation.

While petitioner concedes that it does rent out church property to various groups, it argues that the revenue from the rental lease income is greatly needed by petitioner since it is used to fund church services and church education as well as to provide a venue for organizations to improve the surrounding community. Thus, petitioner contends the

leases/rental agreements are for the "religious, charitable, educational, moral or mental improvement of men, women or children" as set forth under RPTL § 420-a(1)(a) and its property in its entirety should be deemed exempt.

A party seeking to qualify real property for a tax exemption under RPTL § 420 must show that the entity is organized primarily or principally for tax exempt purposes and the subject property is used primarily or principally for exempt purposes (***Sephardic Congregation of South Monsey v. Town of Ramapo***, 47 A.D.3d 915, 849 N.Y.S.2d 662 [2d Dept., 2008]). The test of entitlement to a tax exemption under the "used exclusively" clause is whether the use is reasonably incidental to the primary or major purpose of the facility (***Matter of Yeshivath Shearith Hapletah v. Assessor of Town of Fallsburg, supra***). Tax exemption statutes must be strictly construed since they are in derogation of the sovereign authority, and a heavy burden is placed upon the taxpayer to establish that it was the legislative intent to exempt the property from taxation (***International Harvester Co. v. State Tax Commission***, 58 A.D.2d 125, 396 N.Y.S.2d 82 [3d Dept., 1977]).

Use of the property owned by a religious corporation that is merely auxiliary or incidental to the main and exempt purpose and use will not defeat the exemption (***Matter of Yeshivath Shearith Hapletah v. Assessor of Town of Fallsburg, supra***). An economic benefit to a religious or charitable organization does not by itself extinguish a tax exemption; the issue is how the property is used, not whether it is profitable (***Adult Home at Erie Station, Inc. v. Assessor***, 10 N.Y.3d 205, 886 N.E.2d 137, 856 N.Y.S.2d 515 [2008]). Herein, petitioner leases its premises to such groups as the Syosset Chamber of Commerce, Long Island Competitive Obedience Club, Inc. and Center for Integrated Teacher Education, none of which would qualify for an exemption if they owned property under RPTL §420-a. AHRC also leases a portion of the building and while it would be exempt, that portion of the rental income that exceeds the carrying charges would not be exempt.(See ***Sisters of Saint Joseph v. City of New York,*** 49 N.Y.2d 429, 403 N.E.2d 150, 426 N.Y.S.2d 444 [1980]).

Generating income by renting or letting a non tax exempt entity use the petitioner's facility for non religious or non exempt purposes is not using the property in furtherance of or reasonably incident to primary purpose of the petitioner's institution as a religious corporation (***Lackawanna Community Development Corp. v. Krakowski,*** 12 N.Y.3d 578, 910 N.E.2d 997, 883 N.Y.S.2d 168,(2009); ***Independent Church of the Realization of the Word of God, Inc. v. Board of Assessors of Nassau County,*** 81 A.D.2d 579, 437 N.Y.S.2d 435 (2d Dept., 1981); ***Ellis Hospital v. Assessor of City of Schenectady, Inc.***, 288 A.D.2d 581, 732 N.Y.S.2d 659 [3d Dept., 2001]). The organizations leasing the church property are not members of the congregation nor are they exempt organizations, but for one. They do not function in such a way as to further the goals and purpose of the church, but rather operate in furtherance of their own secular objectives. Leasing space is a commercial enterprise not related to or incidental to the primary purpose of the church under the

circumstances herein.

Respondents have met their burden of demonstrating that the petitioner may not enjoy full exemption where it profits from the renting or leasing of its properties to "for profit" and/or non-exempt organizations, and where the rent exceeds the carrying maintenance and depreciation charges, even if the funds generated are to be used to meet the financial obligations of the church and its various missions. The respondents, clearly, have a rational basis for their decision in denying petitioner full exemption under RPTL § 420-a and its assessment of a portion of the property as taxable is warranted under the undisputed facts herein.

Upon judicial review of an administrative decision, the reviewing court may not re-evaluate the weight accorded the evidence adduced, since the duty of weighing the evidence, interpreting the relevant statutes and making the determination rests solely in the expertise of the agency (***Awl Industries, Inc. v. Triborough Bridge and Tunnel Authority***, 41 A.D.3d 141, 837 N.Y.S.2d 126 [1st Dept., 2007]). The determination of an agency, acting pursuant to its authority and within the orbit of its expertise, is entitled to deference (***Matter of Salvati v. Eimicke***, 72 N.Y.2d 784, 533 N.E.2d 1045, 537 N.Y.S.2d 16 (1988), and even if different conclusions would be reached as a result of conflicting evidence, a Court may not substitute its judgment for that of the agency when the agency's determination is supported by the record (***Partnership 92 LP v. State of New York Division of Housing and Community Renewal***, 46 A.D.3d 425, 849 N.Y.S.2d 43, 2007 [1st Dept., 2007]). Judicial review is limited to whether such a determination was arbitrary or capricious or without a rational basis in the administrative record and the judicial function is at an end once it has been determined that an agency's conclusion has a sound basis in reason (***Pell v. Board of Education***, 34 N.Y.2d 222, 313 N.E.2d 321, 356 N.Y. 833 [1974])

Accordingly, the petitioner's application is denied, and its petition is dismissed.

The foregoing constitutes the Order of this Court.

Dated: December 30, 2009
Mineola, N.Y.

Karen V. Murphy
J. S. C.

ENTERED

JAN 15 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE