

Saraswati Mandiram, Inc.

v.

City of Manchester

Docket No.: 27127-13EX

DECISION

The “Taxpayer” appeals, pursuant to RSA 72:34-a, the “City’s” 2013 denial of the Taxpayer’s request for an RSA 72:23, III religious exemption on Map 39, Lot 49, 582 Chestnut Street, a two-story office building on a small lot consisting of 5,120 square feet (the “Property”). For the reasons stated below, the appeal is denied.

The Taxpayer has the burden of demonstrating the Property meets the requirements of the statute under which the exemption is claimed for the year under appeal. See RSA 72:34-a; 72:23-m; and Tax 204.05. The board finds the Taxpayer did not carry this burden.

The Taxpayer argued the Property was entitled to the religious exemption because:

- (1) the Taxpayer is a Massachusetts non-profit organization, is an I.R.S. 501(c)(3) tax exempt organization under federal law and is qualified and has been operating in New Hampshire since 1997 (see Taxpayer Exhibit No. 1);
- (2) the Property was purchased in May, 2011 to provide a place to share religious beliefs (with areas for meditation and to ‘experience icons’ of the Hindu faith) and to provide child education and a place for refugee immigrants to gain job skills;

(3) the Taxpayer contacted a City employee (Karl Franck in the Planning and Community Development Department) in 2011 and was told there was ‘no problem’ with using the Property for these purposes;

(4) the City denied a religious exemption in 2011 because the Property was purchased after the assessment date (April 1, 2011) and the Taxpayer did not apply for an exemption in tax year 2012;

(5) the City erred in denying the exemption for tax year 2013 for the reasons stated in Municipality Exhibit D (discussed further below); and

(6) the appeal should be granted.

The City argued the denial of the religious exemption for tax year 2013 was proper because:

(1) while the City does not question the Taxpayer has a religious purpose, the Property does not qualify for a religious exemption because it “must be occupied and used for the religious purpose claimed” and that is not a “legal use” under the relevant zoning (see Municipality Exhibit D);

(2) the City investigated the zoning and found the Property only has a variance for “office use” (dating back to 1966) but no “variance or permit... for use as a house of worship or religious education” (id.);

(3) the 1966 variance permitting office use of the Property was necessary because the lot is smaller than the minimum 10,000 square feet required by the zoning ordinance (see Municipality Exhibit F), but that variance does not allow use of the Property for a religious purpose;

(4) the City did not err in denying the exemption for tax year 2013; and

(5) the appeal should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving the City erred when it denied a religious exemption in tax year 2013. The appeal is therefore denied for the following reasons.

The exemption statute at issue in this appeal is RSA 72:23, III which provides:

Houses of public worship, parish houses, church parsonages occupied by their pastors, convents, monasteries, buildings and the lands appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.

To qualify for this tax exemption, the Property must be owned, used and occupied directly for a religious purpose, rather than for some other purpose(s). Cf. Appeal of Liberty Assembly of God, 163 N.H. 622, 627-28 (2012) (affirming denial of religious exemption on portions of taxpayer's property not used directly for a religious purpose), citing Alton Bay Camp Meeting Assn. v. Town of Alton, 109 N.H. 44 (1968); and E. Coast Conf. of the Evangelical Covenant Church of America v. Town of Swanzey, 146 N.H. 658, 653 (2001); see also United Church of Lyndeborough v. Town of Lyndeborough, BTLA Docket No. 26442-12EX (March 25, 2013) (religious exemption denied on church land not being occupied and used for religious purpose).

The City places heavy reliance on Chinese Bible Church of Greater Nashua v. City of Nashua, BTLA Docket No. 25544-11EX (December 2, 2011) (Municipality Exhibit A). The board agrees Chinese Bible Church supports the City's denial of the religious exemption for tax year 2013 insofar as the Decision states: "The [church] had no legal right to occupy the Property until such time as it could obtain an occupancy certificate"; the board found the church did not do so by the April 1 assessment date, but did obtain the certificate approximately three weeks later. (Id. at p. 5.)

Similarly in this appeal, the Taxpayer maintains it is entitled to a religious exemption but did not have a certificate of occupancy for such a religious use as of the April 1, 2013 assessment date. Taxpayer Exhibit No. 2 indicates the Taxpayer submitted an application to the City dated October 1, 2013 for a permit to allow “occupancy for religious gathering (church).”

The board is mindful of the Taxpayer’s frustration with this legal outcome and its unquestioned desire to make beneficial use of the Property. The testimony and other evidence reflects no dispute regarding the Taxpayer’s desire to provide on the Property meditation areas and icons pertaining to the Hindu faith, education for children and help for needy immigrants and these purposes appear to have both religious and charitable components. To meet its burden of proving the City erred in denying the Taxpayer’s claim for a religious tax exemption on the Property, however, the Taxpayer was required to establish that it has met all of the requirements for this statutory exemption, including the legal right to use the Property for a religious purpose (as distinguished from the “office” use permitted by the 1966 variance).

As noted in Chinese Bible Church (at p. 4):

The board’s authority and powers are “entirely statutory” in nature. See Appeal of Land Acquisition, 145 N.H. 492, 494 (2000). It therefore has no equitable power or discretion to adopt either a broader or narrower reading of each exemption than expressed by the legislature in the statutes. See RSA 72:23-m:

“The exemptions afforded by RSA 72:23 . . . shall be construed to confer exemption only upon property which meets [the] requirements of the statute under which the exemption is claimed. The burden of demonstrating the applicability of any exemption shall be upon the claimant.” . . .

quoted in Appeal of Town of Wolfeboro, 152 N.H. 455, 459 (2005) (reversing tax exemption when taxpayer did not meet burden of proving it was entitled to an exemption). See also Appeal of Emissaries of Divine Light, 140 N.H. 552, 555-57 (1995) (“expansive reading” of the religious exemption statute not supported by either the legislative history or the case law and “[t]he taxpayer bears the burden of proving its entitlement to a tax exemption.”).

For all of these reasons, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) within thirty (30) days of the clerk’s date below, not the date this decision is received. RSA 541:3; Tax 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; Tax 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board’s decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule Tax 201.37(f). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board’s denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Albert F. Shamash, Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Pandit R. Ramsamooj, Saraswati Mandiram, Inc., 582 Chestnut Street, Manchester, New Hampshire 03105, Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101

Date: March 20, 2014

Anne M. Stelmach, Clerk