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Taxation--Planned Sales of Produce to Public Preclude Exemption for Farm Owned by Religious Corporation (People ex rel. Watchtower Bible & Tract Soc., Inc. v. Mastin, 191 Misc. 899 (Sup. Ct. 1948))

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forcement as state action to situations where the courts are attempting to enforce valid private agreements, when such action will deny to a citizen the protection of his rights to acquire, enjoy, own and dispose of property. It should be noted that the decision in this case in no way invalidates such restrictive covenants between individuals, merely denying to the parties the use of court facilities in enforcing them.

M. O'D.

TAXATION—PLANNED SALES OF PRODUCE TO PUBLIC PRECLUDE EXEMPTION FOR FARM OWNED BY RELIGIOUS CORPORATION.—Relator is a corporation organized under the Membership Corporation Law of New York State and is the legal and governing body of a group who call themselves "Jehovah's Witnesses." Relator owns and operates a large, well equipped and highly fruitful farm in Tompkins County, New York. Respondents, the local Board of Assessors, held said farm to be not exempt from taxation under Section 4(6) of the Tax Law,[1] on the ground that the property was being used for purposes other than those of a religious corporation. Relator brought proceedings to have their action reviewed, claiming that the property was being used primarily to feed its "ministers" gratuitously, a purpose entitling it to tax exemption. The alleged "ministers" consist of some 250 individuals, all of whom are members of relator's sect and all of whom live at a building maintained by relator in Brooklyn, N. Y. The evidence does not indicate that they do any work of a religious nature or that they are ordained in any accepted sense of the word. In return for services ordinarily performed by laymen, these "ministers" are paid $10.00 per month, plus "free" food, housing and other necessities. Not only is the produce of the farm used for feeding this group, but a large portion of it is sold to the general public for profit. Relator has always known well in advance that such sales were to be made and has consistently derived substantial profit therefrom. Relator claims that these are merely incidental sales of surplus not affecting the exempt status that should be granted because of the primary purpose of the property. Respondents made a motion for judgment. *Held,* motion granted and petition dismissed on the grounds that the so-called "ministers" are but

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[1] "The following property shall be exempt from taxation: . . .
"6. The real property of a corporation or association organized exclusively for the moral or mental improvement of men and women, or for religious, bible, tract, . . . charitable, . . . missionary, . . . educational, . . . purposes, . . . or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes. . . . The real property of any such corporation not so used exclusively for carrying out thereupon one or more of such purposes but leased or otherwise used for other purposes, shall not be exempt, ..."

mere employees and that, in any event, relator's planned sales to the public constitutes such a partial use of the property for a non-corporate purpose as precludes any exemption. *People* ex rel. *Watchtower Bible & Tract Soc., Inc. v. Mastin,* 191 Misc. 899, 80 N. Y. S. 2d 323 (Sup. Ct. 1948).

Under Section 4(6) of the Tax Law of New York the real property of corporations organized for religious, charitable, educational or other socially desirable functions are exempt from taxation. The obvious purpose of the statute is to provide encouragement and to make easier the task of those engaged in such noteworthy endeavors.

The often fatal limitation of the statute, however, is that the property must be used *exclusively* for corporate purposes. Most cases involving religious corporations under this statute have turned precisely on issues involving this requirement. The burden of proof rests heavily on the corporation claiming exemption and it must show clearly and unequivocally that it is entitled to it.[2]

Since exemption from taxation is the exception to and not the general rule,[3] the courts generally have been very strict in their interpretation of this statute.[4] If rents, profits or income are derived from the property, no exemption will be granted.[5] Thus a theater,[6] a garage [7] or an athletic field [8] owned by a charitable or educational corporation but rented to the public will not be exempt. The fact that, besides providing income, the premises are also used for corporate purposes is immaterial.[9] Profit-making, however, is not the sole yardstick to be used in determining exemption. It must also appear that the use of the property is necessary or fairly incidental to the maintenance of the institution for the carrying out of the purposes for which it was organized.[10] Consequently, if the property is not put to any use at all [11] or is used for such purposes as a dumping ground for ashes [12] or for obtaining lumber to improve other

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[2] People *ex rel.* Unity Congregational Soc. of City of New York v. Mills, 189 Misc. 774, 71 N. Y. S. 2d 873 (Sup. Ct. 1947).

[3] *Ibid.*

[4] People *ex rel.* Mizpah Lodge v. Burke, 228 N. Y. 245, 126 N. E. 703 (1920).

[5] *Ibid.*

[6] People *ex rel.* Young Men's Ass'n v. Sayles, 32 App. Div. 197, 53 N. Y. Supp. 67 (3d Dep't 1898), *aff'd,* 157 N. Y. 677, 51 N. E. 1093 (1898).

[7] Board of Foreign Missions v. Board of Assessors, 244 N. Y. 42, 154 N. E. 816 (1926), *modifying* 207 App. Div. 151, 202 N. Y. Supp. 50, 55, 56 (2d Dep't 1923).

[8] People *ex rel. Adelphi College v. Wells,* 97 App. Div. 312, 89 N. Y. Supp. 957 (2d Dep't 1904).

[9] People *ex rel.* Mizpah Lodge v. Burke, *supra* note 4.

[10] People *ex rel.* Blackburn v. Barton, 63 App. Div. 581, 71 N. Y. Supp. 933 (4th Dep't 1901).

[11] *Ibid.*

[12] New York Catholic Protectory v. City of New York, 175 Misc. 427, 23 N. Y. S. 2d 789 (Sup. Ct. 1940).

property,[13] no exemption will be granted. However, where a charitable corporation has purchased vacant land to be used for corporate purposes and there has been unforeseen delay in constructing buildings thereon for such purposes, the temporarily unused land will not be taxed, provided no income is received therefrom.[14]

It is of no consequence that the profit derived from non-exempt activities is used by the corporation for religious or charitable purposes.[15] It is the immediate purpose for which the property is being used and not the ultimate application of the profit that is the determining factor. The reason for such a limitation is apparent. It would be manifestly unfair to allow a religious corporation to compete with a layman in the latter's line of business and still not tax its property, thereby possibly enabling it to undersell the layman because of this saving in overhead. Thus we see that though this statute is of great benefit to religious corporations, it nevertheless does not allow this benefit to be derived at the expense of laymen.

On the question of farms, where the produce has been consumed by members of the benevolent institution, the courts have always held such land to be tax exempt.[16] An exception to the rule that profit-making will bar exemption occurs when the anticipated needs of the institution are more than met and a surplus of produce results. Such surplus may be sold to the public without affecting the exempt status of the property.[17] However, such surplus must be incidental and not by design. It must be occasional and not continuous.[18] Thus where a religious society operated a farm for the education and maintenance of its members and for 24 years showed a loss therefrom, the mere fact that in two subsequent years a profit was realized from the sale of surplus is not a basis for destroying the exempt status.[19]

The decision in the principal case appears to be perfectly in harmony with the provisions of the statute and the decisions interpreting them. It in no way affects property owned by religious corporations and operated solely for corporate purposes. At the outset relator is faced with a difficulty with which any of the more conventional re-

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[13] People *ex rel.* Missionary Sisters v. Reilly, 85 App. Div. 71, 83 N. Y. Supp. 39 (2d Dep't 1903), *aff'd*, 178 N. Y. 609, 70 N. E. 1107 (1904).

[14] Board of Foreign Missions v. Board of Assessors, *supra* note 7.

[15] People *ex rel.* Mizpah Lodge v. Burke, *supra* note 4.

[16] *In re* Miriam Osborn Memorial Home Ass'n, 140 N. Y. Supp. 786 (Sup. Ct. 1912); People *ex rel.* Missionary Sisters v. Reilly, *supra* note 13.

[17] Application of New York Conference Ass'n, — Misc. —, —, 80 N. Y. S. 2d 8, 14 (Sup. Ct. 1948). "No one can seriously urge that the Legislature intended to penalize an institution exclusively devoted to religious and educational pursuits because it salvaged the [unused] products of one of its departments."

[18] *Id.* at —, 80 N. Y. S. 2d at 20. "'Any use of the property outside of the declared lawful purposes can be only occasional, incidental, a result of [un]natural or unexpected conditions, ... The use outside of lawful purposes must not be continuous,—must not become a practice. . . .'"

[19] Application of New York Conference Ass'n, — Misc. —, 80 N. Y. S. 2d 8 (Sup. Ct. 1948).

ligious corporations under similar circumstances would not have to contend, *i.e.*, of proving that the individuals residing at its Brooklyn home are ministers. Whether or not these men are ministers is a factual question and need not be given detailed consideration here. In passing, however, it might be observed that if the courts are to be vigilant in preventing organizations from using this statute as a cloak for gaining pecuniary profit, something more than mere self-designation and free food and housing should be required before a person is deemed a minister.

Granting the possibility that the individuals under discussion might be considered ministers, relator's claim is still utterly without merit in view of the facts appearing in the record. The produce sold by it to the public was not, by any stretch of the imagination, *incidental* surplus left over after its "ministers" were fed. Year after year relator deliberately planned operation of the farm so as to make these products available, knowing well in advance that they were to be disposed of by public sale. These sales to the public, a purpose clearly not within relator's corporate nature, constituted one of its primary objects in operating the farm. Since such a partial use of property for a non-corporate purpose completely destroys any possibility of exemption, the necessary conclusion is that relator's farm is taxable. Overwhelming precedent pointed clearly and decisively to the path this decision was to follow.

T. A. B.