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106 Md. 281, 67 A. 261

Court of Appeals of Maryland.
MAYOR, ETC., OF BALTIMORE et al.
v.
MINISTER AND TRUSTEES OF STARR METHODIST PROTESTANT CHURCH.
June 26, 1907.

Appeal from Circuit Court No. 2 of Baltimore City; Pere L. Wickes, Judge.

Suit by the minister and trustees of the Starr Methodist Protestant Church against the mayor and city council of Baltimore and others. From a decree for plaintiffs, defendants appeal. Reversed, and bill dismissed.

West Headnotes

Statutes 361 ⚿76(6)
361k76(6) Most Cited Cases
Acts 1904, p. 474, c. 263, exempting from taxation the revenue producing property of a church, is, in view of Code, Pub.Gen.Laws 1904, art. 81, § 4, exempting from taxation buildings used exclusively for public worship and parsonages and the ground appurtenant to such buildings, a special law, and is in conflict with Const. art. 3, § 33, prohibiting the passage of a special law for any case for which provision has been made by a general law.

Taxation 371 ⚿2289
371k2289 Most Cited Cases
(Formerly 371k194)
Acts 1904, p. 474, c. 263, exempting from taxation the revenue producing property of a church, while similar property of other churches is taxable, is in conflict with Declaration of Rights, art. 15, requiring every person to contribute his proportion of public taxes for the support of the government according to his actual worth in property.

Argued before BRISCOE, BOYD, PEARCE, SCHMUCKER, BURKE, and ROGERS, JJ.

Albert C. Ritchie, for appellants.
Alonzo L. Miles, for appellees.

ROGERS, J.
This is an appeal from a decree passed by the circuit court No. 2 of Baltimore City enjoining Henry Williams, city collector, from selling for the purpose of state and municipal taxes certain wharf property in Baltimore City, the income, rents, and profits of which belong to the appellee, and further enjoining the mayor and city council of Baltimore and the appeal tax court from assessing said wharf property for the purpose of municipal taxation.

The appellee is an incorporated religious body and a branch of the "Trustees of the Maryland Annual Conference of the Methodist Protestant Church," incorporated by the acts of the General Assembly of Maryland of 1890, p. 182, c. 181. A certain Wesley Starr, late of Baltimore City, deceased, by the last will and testament, gave and devised "unto 'the minister and trustees of the Starr Methodist Protestant Church' in Baltimore City, as a kind of endowment, the rents, profits and yearly income of the wharf opposite the lot on Light street in said city, purchased from J. H. B. Latrobe, trustee and others, January 1, 1842, and at the death or marriage of my daughter-in-law, Mrs. Laura Starr, whichever shall first occur, the yearly rent of two hundred and forty dollars reserved in the said lease from me to them of May last, to be held and enjoyed by said church for and during all time as may elapse, before the corporate authorities, official members or membership of said church shall admit any musical instrument as distinguished from the human voice, into the Sabbath school singing, choir or choir rehearsals or singing schools of said church, held either on the church premises or elsewhere, or shall attempt (I trust they never will) to raise money by the holding, now somewhat fashionable, either in the

church or Sabbath school room or elsewhere, of any fair, festival or concert of instrumental music, or by the delivery of any irreligious or political lecture or the still more demoralizing and sinful mode, should the churches ever so far degenerate as to adopt it, of balls, parties, lotteries, theatrical performances, raffles or the voting for distinguished individuals; when, and upon the happening of any of these contingencies, the said wharf property and ground rents shall fall into the residuum of my estate and be subject to the disposal hereinafter made thereof; and I give and release unto said church all ground rent in arrear under my lease to them and the accruing rent computed to the day of my decease." The church has collected the rents from said wharf property since Mr. Starr's death, and paid the taxes on said property until the year 1904, when the Legislature, by chapter 263, p. 474, of the Acts of 1904, passed an act, exempting said wharf property from taxation, as follows:

"An act to exempt from taxation certain wharf property on Light street, in the city of Baltimore, belonging to the minister and trustees of the Starr Methodist Protestant Church, in Baltimore City.

"Whereas, Wesley Starr, late of Baltimore City, deceased, by his last will and testament, dated the twentieth day of February, in the year 1866, devised and bequeathed unto the minister and trustees of Starr Methodist Protestant Church in Baltimore City, the rents, profits and yearly income of certain wharf property on Light street, in Baltimore City, hereinafter referred to; and

"Whereas, the restrictions and conditions thrown around said devise and bequest are such as that the said minister and trustees of Starr Methodist Protestant Church are deprived of the full enjoyment thereof, without seriously affecting their proper mode of worship; and

"Whereas, it will be a great relief and benefit to said religious body to exempt said wharf property from taxation.

"Section 1. Be it enacted by the General Assembly of Maryland, that the wharf property on Light street, in the city of Baltimore, opposite the lot on said Light street, conveyed to Wesley Starr by John H. B. Latrobe and others, trustees, by deed of January 1st, 1842, and recorded among the land records of Baltimore City, in Liber T. K. No. 315, page 316, and by said Wesley Starr devised and bequeathed unto the minister and trustees of Starr Methodist Protestant Church, of the city of Baltimore, said wharf property fronting thirty-one feet and one inch on Light street, beginning at the intersection of Pratt and Light streets, shall be, and the same is hereby forever exempted from municipal taxation so long as the said property, or the income therefrom, shall be owned and enjoyed by the said minister and trustees of Starr Methodist Protestant Church, and that all taxes in arrear upon said property are hereby released and remitted.

"Sec. 2. And be it enacted, that this act shall take effect from the date of its passage.

"Approved April 12, 1904."

Notwithstanding the passage of the act of 1904, exempting said wharf property from taxation, the appeal tax court of Baltimore City retained the property on its assessment books, and the city collector on November 19, 1906, advertised said property for sale for nonpayment of taxes. The minister and trustees of Starr Methodist Protestant Church filed its bill of complaint in the circuit court ***263** No. 2 of Baltimore City, setting forth the provisions of chapter 263, p. 474, of the Acts of 1904, and prayed that the appellant Henry Williams, city collector, be enjoined from selling the aforesaid wharf property, and that the judges of the appeal tax court be required to strike from the tax books of the city of Baltimore the said property, in so far as the same is assessed to the appellee. The court ordered the preliminary

injunction to be issued as prayed, with leave to appellants to move for its dissolution. After motion to dismiss and hearing, the preliminary injunction was made permanent, by final order of the court, and from that order this appeal is taken.

It is apparent that the constitutionality vel non of Acts 1904, p. 474, c. 263, lies at the root of this contention, and, as the determination of that question will settle the entire matter, we will confine this discussion to that point, because, if null and void, it confers no exemption upon the property in question from assessment and taxation for municipal purposes. In support of the appellant's position, reference is made to Declaration of Rights, art 15, which provides that: "Every person in the state, or person holding property therein, ought to contribute his proportion of public taxes for the support of the government, according to his actual worth in real or personal property; yet fines, duties or taxes may properly and justly be imposed, or laid, with a political view for the good government and benefit of the community." This provision has, with a slight but not material change of phraseology, been a part of the organic law of Maryland for considerably more than a century. Its predominant object is to provide by a fixed enactment equality in taxation, and to prevent, as far as possible, the burden of supporting the government from falling upon some individuals, to the exclusion or exemption of others. It prohibits unjust discriminations, and whilst it remains in force the landowner, be his possessions large or small, will have an absolute and complete guaranty that public taxes cannot be imposed upon him while others who are equally responsible in the law may have themselves relieved of this burden by the partiality of legislative enactment, without subserving any public policy. Its theory is that the distribution of the burden over every class of property alike will lessen the proportion of each individual's contribution, whereby oppressive exactions from the owners of any particular class of property will be impossible. This has been the uniform and consistent principle always followed in Maryland, eminently just in itself as a sound and long-accepted axiom of political economy. It has been upheld by her courts and steadily and tenaciously adhered to by her conservative people. The act of 1904, not only under the construction placed upon it by the appellee, but palpably by reason of its exemption, attempts to overthrow this salutary principle and to disregard article 15 of the Declaration of Rights, and to substitute a novel and experimental scheme, which if suffered to obtain a foothold will inevitably lead to ruinous consequences. If the Legislature may lawfully do this in this particular instance, why not in another, and another, until there would be an almost indefinite number of exemptions, and we think such acts should be stricken down as null, and inoperative, repugnant to the organic law, and prolific of obvious abuses.

We are not to be understood as denying to the Legislature the power, when state policy and considerations beneficial to the public justify it, to exempt, within reasonable limits, some species of property from taxation. A long-continued practice, nearly contemporaneous in its origin with the adoption of the Constitution itself, and many adjudged and carefully considered cases decided by this court, abundantly support that power; but a power to exempt for reasons and upon considerations which are sufficient to uphold the exemption is not a power to nullify the Constitution of the state. It will not be denied at this late day that the Legislature has the power, within reasonable limits, to exempt certain species or classes of property from taxation, when the public interests so require. This is actually done in the case of houses used exclusively for public worship, and the grounds appurtenant thereto, in the case of graveyards and cemeteries, and in the case of hospitals, asylums, and benevolent institutions. Code 1904, art. 81, § 4. The validity

of provisions of this kind is too well established to be now questioned. But it will be perceived in these cases all the property of the class indicated is exempted. The legislature does not exempt some houses of public worship and tax others. It does not exempt some graveyards and cemeteries, some hospitals, and then tax other properties of exactly the same kind. It does not arbitrarily say that this particular house of public worship shall be exempt, but that one shall be taxed. On the contrary, all property falling within any one of the classes mentioned in section 4 is exempt. There is therefore no arbitrary discrimination between different properties of the same kind, but all are treated alike.

To apply this principle to the case at bar, it must be apparent that if the revenue producing property of the Starr Church is exempt, while the similar property of all other churches is taxable, the result will be inequality, instead of equality, in taxation, and the burden of supporting the government will fall upon such other churches, to the exclusion and exemption of the Starr Church. The burden of taxation will not be distributed over every class of property alike; but, on the contrary, one piece of a particular ***264** class of property will be exempt, while all the other properties of the same class will be taxable. When state policy and considerations beneficial to the public justify it, exemptions within reasonable limits may be made: (1) When public policy justifies it. (2) The exemption must be within reasonable limits. (3) The property which may be exempted is same species of property. When these elements exist, then the wisdom of the exemption is for the Legislature, and not for the courts. Will the case before us bear this test?

(1) Does public policy justify the exemption? On the contrary, it is confined solely for the relief and benefit of the appellee.

(2) The exemption is not within reasonable limits, because it is absolutely arbitrary.

(3) The exemption does not apply to a species or class of property, but to one piece of property only, leaving all other property of the same class or species subject to taxation; and for no other reason except the purely arbitrary one of a benefit or personal favor to the appellee and no one else. Wells v. Hyattsville, 77 Md. 125, 26 Atl. 357, 20 L. R. A. 89. And unless the discrimination be arbitrary then the wisdom of the exemption is within the discretion of the Legislature, and is not subject to control by the courts. Simpson v. Hopkins, 82 Md. 489, 33 Atl. 714. This can only mean that, if the discrimination is arbitrary, then it is subject to control by the courts. So that where the revenue producing property of all other churches continues taxable, and the revenue producing of this church is made exempt, such exemption can be nothing else than an arbitrary discrimination between the property of the appellee and all other property of the same species or kind held by similar corporations, and such an arbitrary exemption must be void under article 15 of the Declaration of Rights. Not only is it unlawful for the Legislature to exempt one man's property and tax another of exactly the same kind, but the Legislature may not impose a tax upon the property of the person at one rate, and upon the property of another at a different rate. A fortiori, the Legislature should not tax the revenue producing property of all churches except one, and for this prescribe, not a different rate, but no rate at all; in other words, exemption. State v. P. W. & B. R. R. Co., 45 Md. 361, 24 Am. Rep. 511. So this court has said, in Wilkins Co. v. Baltimore City, 103 Md. 293, 63 Atl. 562. The state has full power to exempt any class of property as it may deem best according to its views of public policy. It cannot be now questioned that a state may classify property in all proper and reasonable ways, provided the discriminations are based upon some sound reasons of public policy, and are not arbitrary or hostile. Justice Field said, in Santa Clara v. Southern Pacific Railroad Co. (C. C.) 18 Fed. 385, referring to the guaranty of equal

protection: "It implies not only that the means which the laws afford for such security shall be equally accessible to him, but that no one shall be subject to any greater burdens or charges than such as are imposed upon all others under like circumstances. *** Equal protection is the same protection under the same circumstances; all are to stand alike in like intrinsic conditions." Again, in Railway v. Ellis, 165 U. S. 153, 17 Sup. Ct. 261, 41 L. Ed. 666, Justice Brewer says: "In all cases it must appear, not only that a classification has been made, but also that it is one based upon reasonable ground-some difference which bears a just and proper relation to the attempted classification-and is not a mere arbitrary selection."

In the case we are considering, no classification has been made at all, so that the law lacks the very first element which it must have to gratify the fourteenth amendment of the Constitution. It is simply an arbitrary selection of the property of the appellee, and the conferring of a favor upon it, which is denied all other owners of similar property. If this can be done in one case, it can be done in another, and it would then be in the power of the Legislature to willfully discriminate between its citizens, taxing some on account of their property, and at the same time exempting others similarly situated, and all while acting under no reasonable, just, or proper rule whatever, but solely at the dictation of its own caprice. Even an unreasonable classification of property is prohibited by the fourteenth amendment. All the more must a perfectly unreasonable discrimination between properties in the same class be prohibited by the same amendment. Again, we think this act is invalid because in conflict with article 3, § 33, of the Constitution of Maryland, which provides that "the General Assembly shall pass no special law for any case for which provision has been made by an existing general law." Section 4, art. 81, of the Code, title "Exemptions," specifies several different classes of property which shall be exempt from taxation, viz.: "To houses or buildings used exclusively for public worship, nor to the furniture contained therein, nor to the parsonage connected therewith, nor to the ground appurtenant to such houses, nor to buildings so exclusively used for public worship or as parsonages which are necessary for the respective uses thereof." All property of the kind thus described is exempt from taxation. Here, then, is a general law declaring in what cases the property of religious bodies shall be exempt, and specifying in detail just what kinds of such property shall enjoy exemption; but Acts 1904, p. 474, c. 263, is a special law providing exemption for the property of a religious body. When the cases in which the property of religious bodies shall have exemption are already covered by a general law, it is a special law for a case for which provision has been made by an existing general law, and as such is void ***265** because in contravention of article 3, § 33, of the Constitution.

We think, in the present case, that this is a special law exempting the wharf property of the appellee from municipal taxation, and is void, because it relates to the exemption from taxation of the property of a religious body, and this is a subject for which provision has already been made by an existing general law, namely, article 81, section 4, of the Code. The special laws contemplated by the Constitution are those that provide for individual cases. The object of the provision of the Constitution relied on was to prevent the abuses that occurred in the great multiplicity of legislation for particular and individual cases, and not to prevent legislation to meet the wants of communities less extensive in their territorial limits than the state. State v. County Com'rs of Baltimore County, 29 Md. 520; Baltimore City v. Allegany Co., 99 Md. 12, 57 Atl. 632.

For the reasons assigned above, the decree of the circuit court No. 2 of Baltimore City, passed in

this case, making the injunction perpetual, must be reversed, and the bill dismissed, and the injunction dissolved; the appellees to pay the costs above and below.

Md. 1907.
City of Baltimore v. Minister and Trustees of Starr Methodist Protestant Church
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