IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.28782 of 2005
and
W.P.M.P.No.31444 of 2005

V.O. CHIDAMBARAM EDUCATIONAL SOCIETY,
Rep. By one of its Member &
Authorised Signatory,
Mr.V.Chockalingam,
Tuticorin – 8. ... Petitioner

Vs.

1.Government of Tamil Nadu,
Rep. By its Secretary to Government
Revenue Department,
Fort Saint George, Chennai.

2.The Special Commissioner and
the Commissioner of Land Reforms (ULT)
Chepauk, Chennai.

3.The Assistant Commissioner,
Urban Land Tax,
Thirunelveli.

4.The Tahsildar,
Tuticorin. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records and quash the impugned order vide G.O.No.470, Revenue (ULT 3(2) dept) dated 28.06.2005, passed by the first respondent and direct the first respondent herein to grant exemption from payment of the URBAN LAND TAX in respect of the petitioner society's properties.

For Petitioner : Mr.J.Melwin Jabaz
For Mr.T.Mathi

For Respondents 1 & 4 : Mr.K.Venkatesh
Government Advocate

For Respondents 2 & 3 : Mr.R.Rajeswaran
Special Government Pleader

ORDER

Heard Mr.J.Melwin Jabaz, learned counsel appearing for Mr.T.Mathi, learned counsel for the petitioner; Mr.K.Venkatesh, learned Government Advocate for the respondents 1 & 4 and Mr.R.Rajeswaran, learned Special Government Pleader for the respondents 2 & 3.

2.The petitioner is a registered Society under the provisions of the Societies Registration Act formed during the year 1951 as a Charitable Organization. The petitioner is running educational institutions and it is stated that they are not receiving any capitation fee or donation from the students and the objective of the institutions is to provide best education to the poor and downtrodden and to those students were socially and economically backward in the Southern parts of Tamil Nadu.

3.In the affidavit filed in support of the writ petition in paragraph 3 therein, the petitioner has stated that they conduct 18 Under

Graduate Courses, 11 Post Graduate Courses, 5 M.Phil Degree Courses and 5 Research Centres and the Society runs 3 Colleges and 2 Schools. The details are as follows:

> *"3.I state that the petitioner society now conducts 18 Under Graduate Courses, 11 Post Graduate Courses, 5 M.Phil Degree courses and 5 Research Centres.*
>
> 1. *V.O.C. College started in the year 1951.*
> 2. *V.O.C. College of Education from the year 1955 and*
> 3. *A.P.C.Mahalaxmi College for Women, from the year 1973, which are affiliated to Manonmaniam Sundaranar University. The Petitioner Society also runs 2 schools (1) Bharathiar Vidyalayam Boys' Higher Secondary School and*
>
> *(2) A.P.C. Veerabahu High School"*

4.It is further stated that the college which was started in the year 1951 has about 1500 students and there are 100 teaching staff and 40 non teaching staff. The college of education has 12 teaching staff and 5 non teaching staff and there are 100 students. The Women's college has around 1200 students, 65 teaching staff and 32 non teaching staff. The Boys' Higher Secondary School has 650 students, 22 teaching and 4 non teaching staff and the High School has 150 students, 5 teaching and 2 non teaching staff. These details is as per the Student/Staff strength as of August 2005 and obviously, there would have been an increase in the students strength because more than 11 years have elapsed after the writ petition was filed.

5.It is seen that on 07.07.1995, the 3rd respondent passed an order levying Urban Land Tax for the lands owned by the petitioner society. This was followed by another order dated 21.03.1996 to the similar effect. The petitioner, being a charitable educational institutions, had the requisite registration under Section 12A of the Income Tax Act, 1961. Therefore, the petitioner approached the 1st respondent, by representation dated 05.02.1997, requesting for exemption from payment of Urban Land Tax. Along with the representation, the application for exemption in proper form was appended. Since no action was taken on the said representation, another representation was made on 06.02.1997 to the 1st respondent requested for exemption. While these applications were pending the 4th respondent viz., the Tahsildar issued a notice termed as 'Urgent Notice' dated 20.02.1997 directing the petitioner to pay to the Urban Land Tax for the period fasli 1401 to 1406, being a sum of Rs.1,93,594/-. Once again the petitioner approached the 1st respondent, by way of representation dated 11.03.1997, requesting that the demand issued by the 4th respondent should be stayed. Parallelly, the petitioner also filed a revision petition before the 2nd respondent and also prayed for an order of interim stay of the demand issued by the 4th respondent. The 2nd respondent, by order dated 19.03.1997, granted stay of the demand for a period of 100 days. Subsequently, the petitioner was directed to remit the necessary Court fee which was complied with by the petitioner on 27.03.1997. Since the exemption application was not decided and the matter was kept pending, the petitioner moved for extension of the interim order, by representation dated 13.06.1997 and the stay was extended by order dated 30.06.1997. The 2nd respondent, by communication dated 07.01.1998, directed the petitioner to produce the following details:

> "*(1)The aim and object of the Educational society.*
> *(2)The way of utilization of income, derived from the properties, with evidences*
> *(3)The urban lands owned by the society with usage of lands*
> *(4)The orders of grant from the Government if any*
> *(5)Copies of orders of recognition from the Educational authorities."*

This direction was complied with by the petitioner and a detailed representation was submitted on 21.03.1998. The certificate issued by the Chartered Accountant was also appended. This was followed by another representation dated 08.05.1999 enclosing the Income and Expenditure Statements and Balance Sheets for the year 1991-1992, 1992-1993 and 1993-1994. It appears that in the interregnum, the 3rd respondent had issued a notice dated 01.04.1997 calling for certain details, which were duly furnished by the petitioner, they being:-

> *"1. Copy of the Notice*
> *2. Forms 5(G) dated 07.07.1995 & 21.03.1996*
> *3. Application for exemption*
> *4. Xerox copy of the property Document*
> *5. Copy of the affiliation order of Madras University*
> *6. Certificate of registration of the society and by laws*
> *7. Registration under 12A(A) of Income Tax Department*
> *8. Audit statements for the year 1991-1995*
> *9. Tax Notice of the Tahsildar Form No.6"*

6.What is interesting to note is that in all the representations claiming exemption, the petitioner has in extensively stated about the charitable activities done by the petitioner and how the land has been used by their educational institutions and adequate proof of their income and expenditure was also produced, apart from the fact that substantial extent of land has been directed to be handed over to the Superintendent of Police, Tuticorin for the purpose of their office. This direction was at the instance of the District Collector, Tuticorin and the rent which the petitioner is receives for handing over the said property is Rs.20/-. However, without noticing any of these aspects, the 1st respondent has mechanically rejected the application for exemption by the impugned order. If the substantial portion of the land has been used for housing the office of the Superintendent of Police, Tuticorin based on the directions issued by the District Collector, it would be sufficient to hold that the petitioner should be granted unconditional exemption. It appears that the extent handed over to the office of the Superintendent of Police is more than 36 grounds and the monthly rent the institution gets is Rs.20/-, whereas the Urban Land Tax which is demanded is more than Rs.21,000/-. The 1st respondent, in the impugned order, does not dispute the fact that the petitioner is an educational society running charitable institutions. Thus, when the 1st respondent does not dispute or deny the activities done by the petitioner nor has disputed the fact that substantial extent of the property is utilised by the Police Department, this is a fit case where the unconditional exemption from payment of Urban Land Tax should be granted to the petitioner.

7. In chapter VI of the Tamil Nadu Urban Land Tax Act, 1966, certain special provisions have been carved out. Under the said chapter, Section 27 empowers the Government to exempt or reduce urban land tax. In terms of Section 27(1), the Government if satisfied

that the payment of urban land tax in respect of any class of urban lands or by any class of persons will cause undue hardship, may exempt such lands or persons from payment of urban land tax or reduce the amount of such urban land tax whether prospectively or retrospectively. Thus, to be entitled to exemption under Section 27, the Government should be satisfied that the provisions of the Act would cause undue hardship. Section 29 falls in Chapter VII of the Act, which deals with "exemption". The said provision exempts the applicability of the Act under certain circumstances, stated therein, one such circumstances being any urban land used by schools or colleges or universities for purposes directly connected with education, but not including any urban land owned by such educational institutions and which is vacant or in which buildings from which income is derived have been constructed. Explanation I states that for the purposes of this clause, schools or colleges shall mean only such schools or colleges, which are educational institutions recognised either by the Government or by any University, as the case may be. Explanation II states that urban land on which schools, colleges or universities or staff quarters or hostels or other buildings used for the welfare of students, have been constructed, or used as playgrounds attached to such schools, colleges or universities, shall be deemed to be urban land used for the purposes directely connected with education. The settled manner in which the objects of the organisation or the trust should be considered in its entirety, while considering or granting exemption and should not be taken into consideration in a trenkated manner. It is not proper to take only certain portions of the objects of the trust or the objects of the society or the trust and term the society or trust as commercial or sectarian area.

8. In ***Southern India Education Trust vs. Govt., of Tamil Nadu*** reported in ***1999 (III) CTC 711,*** the society appears to have approached the Government seeking exemption under Section 27(1) of the Act, which was rejected. The Writ Petition challenging the said order was dismissed against which appeal was preferred before the Division Bench. It was contended by the appellant therein that there being no dispute that the institution was an educational institution, it would falls under Section 29(h) of the Act and hence entitled to be completely exempted from the purview of the Act. While allowing the appeal, the Hon'ble Division Bench pointed out that the entitlement for exemption under Section 29(h) of the Act does not depend only upon the nomenclature or the avowed objectives of the institution. But the actual purpose for which the properties are utilised or put to use, has

to prevail. It was further held that there can be no estoppel against the statute and the assessee would be entitled for exemption under Section 29 of the Act, if the properties would fall under that provision. Thus, the distinction between a claim for exemption under Section 27 and the exemption provided for under Section 29 was clearly culled out by the Hon'ble Division Bench and it was observed that a reading of both the provisions would disclose that while section 29 deals with a total and mandatory exemption, section 27 of the Act contemplates discretionary exemption which the Government is entitled to grant subject to the assessee satisfying the required criteria. In other words, the exemption under section 29 of the Act is automatic, mandatory and total and there is no discretion left with the Government to refuse the grant of exemption, if the assessee falls within any one of the categories enumerated thereunder. When once an institution is either notified or is shown to be covered under section 29, the exemption is complete and unconditional and the Revenue has no discretion to ignore or to refuse the exemption or to pass any order of assessment. The above decision was taken note of by this Court in the case of ***Shree Mahaveer Jainkalyan Sangh vs. Special Thasildar*** reported in ***2016 SCC Online Mad 20826*** and the Writ Petition filed by the said society was allowed. By applying the above decision to the facts of the case, the only conclusion that can be arrived at is that the exemptions from the provisions of the Act, insofar as the petitioner is concerned is automatic and there is no discretion left with the Government to refuse the grant of exemption, as it is clearly seen that the land used by the petitioner society falls under Section 29(h) of the Act.

9.For the above reasons, the Writ Petition is allowed. The impugned order is set aside and the respondents are directed to grant exemption to the petitioner society taking note of the facts which have been referred to and pass appropriate orders in this regard within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

26.10.2017

Speaking order/Non Speaking order
Index : Yes/No
Internet : Yes/No
Sgl

To

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T.S.SIVAGNANAM, J.

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