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W.P. (MD) No. 1918 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. (MD) No. 1918 of 2023

and

W.M.P. (MD) No. 1700 of 2023

M.Kathun Jannath,
Correspondent,
Alhikmah Matriculation School,
Alhikmah Educational & Charitable Trust,
P.T.R. Colony,
Uthampalayam,
Theni District.

... Petitioner

Vs.

- 1.The District Collector,
O/o. The District Collector,
Theni, Theni District.
- 2.The Assistant Director of Panchayat,
Office of the Assistant Director of Panchayat,
Theni District.
- 3.The Executive Officer,
Town Panchayat,
Hanumanthapatty,
Theni District.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorari call for the records pertaining to the impugned proceedings issued by the 3rd respondent dated 18.11.2022, proceedings in Na.ka.No. 60/2021 dated 14.12.2022 and proceedings in Na.ka.No. 60/2021 dated 25.01.2023 and quash the same as illegal.

For Petitioner	: Mr. M.A.M.Raja
For Respondents	: Mr. D.Gandhiraj (R1 & R2) Special Government Pleader
	: Mr. S.Satheesh (R3) Government Advocate

ORDER

Heard Mr. M.A.M.Raja, Learned Counsel appearing for the Petitioner, Mr. D.Gandhiraj, Learned Special Government Pleader appearing for the First and Second Respondents and Mr. S.Satheesh, Learned Government Advocate appearing for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, viz., Alhikmah Matriculation School, is an unaided private school established by Alhikmah Educational and Charitable Trust, situated within the territorial limits of the Third Respondent, viz., Town



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Panchayat, Hanumanthanpatty in Theni District, and the levy of property tax for its buildings and lands is governed by the provisions of the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as 'the Act' for short).

3. At this juncture, it must be noticed that Section 83(1)(c) of the Act was substituted by the Tamil Nadu Municipal Laws (Second Amendment) Act, 2018, which came into force on 25.01.2018, and the following comparative table would reflect the changes made:-



As in existence till 24.01.2018	As in existence from 25.01.2018
83. <i>General exemptions .— (1) The following buildings and lands shall be exempt from the property tax :---</i> (c) <i>buildings used for educational purpose including hostels attached thereto, public buildings and places used for the charitable purpose of sheltering the destitute or animals, and libraries and playgrounds which are open to the public.</i> <i>Provided that nothing contained in clauses (a), (c) and (e) shall be deemed to exempt from property tax any building or land for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses.</i> <i>Explanation.— The exemption granted under this Section shall not extend to residential quarters attached to schools and colleges not being hostels or to residential quarter attached to hospital, dispensaries and libraries.</i>	83. <i>General exemptions .— (1) The following buildings and lands shall be exempt from the property tax :---</i> (c) <i>buildings used for educational purpose including hostels and libraries, run by the Government or municipality or any other local authority or institutions aided by the Government and buildings used for charitable purpose of sheltering the destitute or animals and orphanages, homes and schools for the deaf and dumb, asylum for the aged and fallen women and such similar institutions run purely on philanthropic lines as are approved by the council:</i> <i>Provided that the buildings used for educational purpose by the Government aided institutions for conducting self-financing courses shall be subject to levy of property tax.</i> <i>Explanation.— The exemption granted under this Section shall not extend to residential quarters attached to schools and colleges not being hostels or to residential quarter attached to hospital, dispensaries and libraries.</i>

It would be evident from the said amendment that the exemption from levy payment of property tax that was hereto available for all buildings used for



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educational purpose has been restricted to only those buildings which are used for educational purpose run by the Government or Corporation or by any other local authority or educational institutions aided by the Government, meaning thereby that buildings of unaided private educational institutions, like the Petitioner in this case, would become liable from 25.01.2018 onwards for payment of property tax and would not be entitled to the exemption. The validity of the Tamil Nadu Municipal Laws (Second Amendment) Act, 2018, which was challenged by unaided private educational institutions, was upheld by the Division Bench of this Court in ***Montfort Academy Matriculation Higher Secondary School -vs- Secretary, Department of Municipal Administration and Water Supply*** (Order dated 13.09.2019 in W.P. Nos. 27451 of 2018 etc., batch). Though Special Leave Petition has been preferred before the Hon'ble Supreme Court of India by the Tamil Nadu Nursery Primary Matriculation Higher Secondary Schools Association in SLP (Civil) Diary No. 23565 of 2020 against the aforesaid order, an interim order has been passed therein on 08.10.2021, which reads as follows:

“We clarify that there is no stay on the impugned judgment and the Petitioner would pay the property tax. In case the



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Petitioner succeeds, appropriate directions/order would be passed.”

4. While matters stand as narrated supra, the Third Respondent by Proceedings in Na. Ka. No. 60/2021 dated 18.11.2022, 14.12.2022 and 25.01.2023 had called upon the Petitioner to remit the arrears of property tax for the period from I/2009-2010 to II/2022-2023 aggregating to Rs. 5,50,270/-, failing which action would be taken for its recovery and launching criminal prosecution under the relevant statutory provisions. Aggrieved thereby, the Petitioner has filed this Writ Petition.

5. The primordial contention of the Petitioner in this Writ Petition is that the Hon'ble Supreme Court of India in ***Government of Kerala -vs- Mother Superior Adoration Convent*** (Order dated 01.03.2021 in Civil Appeal No. 202 of 2012) has held that the buildings of the educational institutions in the State of Kerala are not liable for payment of property tax, which benefit has to be extended to the Petitioner as well. On a plain reading of the said decision, it is apparent that such conclusion had been arrived on the basis of the provisions contained in the Kerala Building Tax Act, 1975, which cannot



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be relied in interpreting the provisions of the Tamil Nadu District Municipalities Act, 1920 as amended by the Tamil Nadu Municipal Laws (Second Amendment) Act, 2018, which is differently worded and restricts the exemption to a specific class of educational institutions from 25.01.2018 onwards and the Hon'ble Supreme Court of India has also clarified in its interim order that the unaided private educational institutions would be liable to pay the property tax due subject to the result of the pending Special Leave Petition.

6. At the same time, it must not be lost sight that in view of the relevant statutory provisions as it stood upto 24.01.2018, the Petitioner cannot be mulcted with liability for property tax for its buildings till that period as highlighted by this Court in ***A.Subramanian, Managing Trustee of Merit Educational Charitable Trust -vs- Executive Officer, III Grade Municipality*** [2010 (4) CTC 31], but the Petitioner cannot avoid such levy of property tax for its buildings from 25.01.2018 onwards.

7. On perusal of the impugned orders sent by the Third Respondent, it is noticed that while demanding the property tax from the Petitioner, it has not



been explained as to how the said amount has been arrived with reference to the relevant factors for making such assessment.

8. It is trite law that any administrative action which involves civil consequences must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken as held by the Hon'ble Supreme Court of India in *State of Orissa -vs- Binapani Dei* (AIR 1967 SC 1269). Such flaw in the decision-making process of the Third Respondent certainly vitiates the proceedings.

9. The result of the foregoing discussion is that the Writ Petition is disposed on the following terms:-

- (i) the impugned orders in Na. Ka. No. 60/2021 dated 18.11.2022, 14.12.2022 and 25.01.2023 passed by the Third Respondent are set aside, and the matter is remitted for fresh consideration for levy of property tax only for the period from 25.01.2018 onwards;



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- (ii) it shall be incumbent upon the Third Respondent to issue fresh demand notice following the prescribed procedure for levy of property tax from 25.01.2018 onwards along with a working-sheet showing the calculation with specific details of the annual value for the land with measurement and cost of land and buildings, granting an opportunity of not less than 15 clear working days to the Petitioner to submit its objections, if any, for the same;
- (iii) if any objections are raised by the Petitioner, the Third Respondent shall duly examine the same and if necessary, fresh measurement of land and buildings shall be taken by an authorized engineer and/or surveyor of the Third Respondent in the presence of the Petitioner or its authorized representative, after due notice of such inspection;
- (iv) if the Third Respondent requires any other details or supporting materials from the Petitioner for proper assessment of property tax, the same shall be intimated in writing to be furnished within a time frame of not less than 15 clear working days for the same;
- (v) an enquiry shall be conducted thereafter affording full opportunity of personal hearing to the Petitioner to explain its position for determination of the proper amount of property tax to be levied;



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- (vi) a reasoned order shall be passed by the Third Respondent dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment, which shall be subject to the result of SLP (Civil) Diary No. 23565 of 2020 pending before the Hon'ble Supreme Court of India;
- (vii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law;
- (viii) consequently, the connected Miscellaneous Petition is closed; and
- (ix) there shall be no order as to costs.

02.02.2023

Index : Yes/No
Internet : Yes/No
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Note: Issue order copy by 10.05.2023.



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