HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No. 33113 OF 2014

DATE: 19.02.2015

Between:

St. Elizabeth Convent (E.M.) School,
Rep., by its H.M. and Correspondent,
Bhongir, Nalgonda District .

… Petitioner

And

State of Telangana, rep., by its Secretary,
Department of Municipal Administration,
Hyderabad & others.

… Respondents

This Court made the following:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No. 33113 of 2014

ORDER: (Per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This writ petition has been filed by the petitioner claiming for a writ of Mandamus declaring the action of the 2nd respondent in not considering and treating its recognized educational institution in the land and building premises as exempted under Section 88(1)(c) of the A.P. Municipalities Act, 1965 (hereinafter referred to as "the Act") and also the demand notice dated 22.10.2014 as illegal and contrary to the provisions of the Act.

The sum and substance of the case of the petitioner is that it is running an educational institution and as such it is not liable to pay any property tax by virtue of the provisions of Section 88(1)(c) of the Act. In spite of that, the 2nd respondent has issued a demand notice calling upon the petitioner to pay a sum of Rs.9,00,716/-.

It is contended in the writ petition that without considering the question of grant of exemption the aforesaid demand is illegal.

Counter affidavit has been filed wherein it has been stated in substance that the petitioner educational institution is not entitled to any exemption and as such demand notice has been issued. However, no decision has been taken refusing to grant exemption.

We have heard the learned counsel for the parties and we are of the view that at this stage the demand for payment of property tax without deciding the issue of grant of exemption is not supportable. The petitioner has already made an application for granting exemption, but no decision has been taken in either way, and the municipal authority has expressed its mind in the counter affidavit stating that the petitioner educational institution is not being used for charitable purposes.

Fact remains that the Municipal Commissioner has not taken any independent decision on the application made by the petitioner. Therefore, this demand is not sustainable and the same is accordingly set aside. We direct the Municipal Commissioner to take up this matter for hearing. Accordingly, notice of hearing shall be given and the petitioner school will be free to appear before the Municipal Commissioner with the documents to support its claim for exemption. After considering the documents and carefully reading the relevant provision of law, the Commissioner shall take a decision with reasons. The entire exercise shall be completed within eight weeks from the date of communication of this order. In the event, the petitioner does not turn up in response to the notice, the issue will be a closed chapter and our order will stand set aside and the demand notice will revive. Since we have set aside the demand, the amount deposited in terms of our interim order will be refunded to the petitioner forthwith.

The writ petition is accordingly allowed.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

Date: 19.02.2015
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