IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.No.32143 of 2015 and
M.P.Nos.1 and 2 of 2015

Society of Seva Missionaries,
St.Anthony's Matriculation School
rep. by the Correspondent,
No.5/1, Swaminathan Nagar,
Kottivakkam,
Chennai-41. ... Petitioner

Vs.

1. The Government of India
 rep. by its Secretary,
 Municipal Administration and Water Supply
 Department, Fort St. Geoge,
 Chennai-9.

2. The Commissioner,
 Corporation of Chennai,
 Rippon Building,
 No.1131, EVR Periyar Salai,
 Park Town, Chennai-3.

3. The Assistant Revenue Officer,
 Revenue Department,
 Zone-14, Chennai Corporation,
 Ripon Building,
 No.1131, EVR Periyar Salai,
 Park Town, Chennai-3. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order dated 03.02.2014 in Assessment Order No.N/14/183/13-14/1622 on the file of the 3rd respondent and the consequential Notice of Demand dated 25.09.2015 in Bill No.14-183-08662-000 and quash the same in respect of the petitioner school.

For Petitioner : M/s.Dr.Fr.A.Savier Arulraj,
Senior Counsel

For RespondentS: Mr.S.Diwakar,
Special Government Pleader for R1
Mr.T.C.Gopalakrishnan for R2, R3

O R D E R

Heard Dr.Fr.A.Savier Arulraj, the learned Senior Counsel assisted by Ms.A.Arul Mary, the learned Counsel for the petitioner and Mr.T.C.Gopalakrishnan, learned Standing Counsel for the respondent Corporation and Mr.S.Diwakar, the learned Special Government Pleader for the Government of Tamil Nadu.

2. The petitioner is a Minority Institution established and administered by the Congregation of Sisters of Seva Missionaries. It is a Society registered under the provisions of the Societies Registration Act bearing Registration No.41/1976. The petitioner's Institution was established in the year 1983 and the School is a Matriculation School and they have constructed a building in the land owned by them which was originally within the jurisdiction of Kottivakkam Panchayat. Prior to that, it was fallen within the jurisdiction of St.Thomas Mount Panchayat Union. During 2011, on account of the decision taken by the Government to annexe certain panchayat areas to the Chennai Corporation Limits, the area where the petitioner school is situated came within the jurisdiction of the Corporation of Chennai. When the institution was functioning within the limits of Kottivakkam Panchayat, they had no option except to pay the property tax to the Panchayat. This is so because the Tamil Nadu Panchayat Act, 1996 does not exempt payment of property tax for building owned by educational institutions. Even after the property has been transferred to the jurisdiction of Chennai Corporation, it appears that Sisters of Seva Missionaries, who were running the school, were not aware of the fact that there was a special provision under the Chennai City Municipal Corporation Act which grants exemption to the buildings used for educational purposes. Having come to know about the same, the petitioner submitted representations and since there was no worthwhile response to the same, the petitioner is before this Court, challenging the notice issued by the respondent Corporation proposing to assess the petitioner's property to property tax.

3. The learned Senior Counsel for the petitioner submitted that in terms of Section 101 of the Chennai City Municipal Corporation Act, 1919, the classes of buildings and lands which are exempted from property tax have been enumerated and Clause (c) of Section 101 would apply to the petitioner which reads as follows:

> "Section 101. General Exemptions : The following buildings and lands shall be exempt from the property tax:
>
> (a) ....
>
> (b) ....
>
> (c) (buildings used for educational purpose including hostels attached thereto and places used for the 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)''

Thus, if a building is used for an educational purpose including hostels attached thereto, they are exempt from payment of property tax. The expression used in Section 101 ''buildings shall'' be exempt from property tax. Thus, if it is established that the building is used for educational purpose, the payment of property tax is automatically exempted, nevertheless, the respondent Corporation have been insisting upon the petitioner to pay the property tax.

4. The learned Standing Counsel for the respondent Corporation placed reliance on Section 414 of the CCMC Act, 1919 which was inserted by Tamil Nadu Act 7 of 2000. The said provision is a transitional provision on the expansion of the areas of the city.

5. The learned Counsel referring to the said provision submitted that the area where the petitioner's school is situated is an area which was annexed to the corporation limit and by virtue of Section 414 A of the Act, the respondent Corporation is entitled to collect the property tax which was paid by the petitioner hitherto to Kottivakkam Panchayat. Therefore, it is submitted that the petitioner cannot claim exemption from payment of property tax.

6. As rightly pointed out by the learned Senior Counsel, it is necessary to examine the statutory provisions as a whole. Sections 410 to 415 of CCMC Act come under the Transitional and the Transitory provisions. Originally, there were only 6 provisions under the said sub-heading, namely, Sections 410 to 416 of the Act. Section 414-A was inserted by an amendment in

2012. Before examining Section 414 A, it is necessary to look into Section 414 which deals with Transitory Provision and reads as follows:

> ''414. Transitory Provision : Notwithstanding anything contained in this Act, or in any other law for the time being in force, the State Government may, by notification, if necessary, appoint a Special Officer to exercise the powers and discharge the functions of the corporation until the day on which the first meeting of the council is held after ordinary elections to the corporation after the commencement of the Tamil Nadu Municipal Corporation Laws (Amendment and Special Provision) Act, 1994 (Tamil Nadu Act 26 of 1994).
>
> (2) The Special Officer appointed under sub-section (1) shall hold office (up to the 31st day of December, 1996 or for such shorter period as the State Government may, by notification, specify in this behalf)''

Section 414-A though has been separately numbered as a provision, it is to act in addition to Section 414. Therefore, it is necessary to read Section 414 and Section 414 A together. If that is done, then, the only plausible explanation which can be given is that this transitory period should be protected so that neither the panchayat within whose jurisdiction the property was originally there nor the Corporation to which the property is now annexed would be put to any financial loss. Thus, on a reading of sub-sections 1 to 3 of Section 414 A, it is clear that if there are arrears of property tax payable by an assessee to the erstwhile panchayats, the Corporation of Chennai by invoking transitional power can recover the same. Likewise, if there are any other dues payable, the same can also be recovered by the Corporation of Chennai. However, this transitory provision cannot operate endlessly, because the provision itself is termed as Transitory. To mean that, it should operate for an interim period till the transitions takes place.

7. Admittedly, in the instant case, the transition took place in 2011 and the Council for the Corporation had met on several occasions. Therefore, the respondents cannot any longer rely upon the transitory provision. If the said argument of the respondent Corporation is to be accepted, it may result in disastrous consequence as an assessee whose building was originally in the panchayat union limits after being annexed to the Corporation of Chennai will claim that the Corporation of Chennai can never increase the property tax and should adopt only the value fixed by the erstwhile panchayat. Therefore, this submission does not merit acceptance.

8. The property-in-question having been now transferred to the jurisdiction of Chennai Corporation, necessarily, the respondents have to consider the claim for exemption made by the petitioner for which purpose this Court would direct the petitioner to submit a representation for appropriate action in this regard.

9. Accordingly, the Writ Petition is allowed and the impugned notices are set aside and the petitioner is directed to submit a representation enclosing the full property details and the type of construction and total built up area etc. along with necessary annexures to the respondents 2 and 3. On receipt of the said application, the 3rd respondent shall inspect the building and submit a report and based on the same, the respondent Corporation shall take a decision on the plea for exemption in accordance with the statutory provision after affording an opportunity of personal hearing to the authorised representative of the petitioner. Till such time, no demand shall be raised on the petitioner for property tax. However, the petitioner shall continue to pay the water and sewerage charges which shall be collected from the petitioner at the present rate.

10. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Government of India,
Municipal Administration and Water Supply
Department, Fort St. Geoge,
Chennai-9.

2. The Commissioner,
Corporation of Chennai,
Rippon Building,
No.1131, EVR Periyar Salai,
Park Town, Chennai-3.

3. The Assistant Revenue Officer,
Revenue Department,
Zone-14, Chennai Corporation,
Ripon Building,
No.1131, EVR Periyar Salai,
Park Town, Chennai-3.

+1cc to M/S.T.C.Gopalakrishnan, Advocate sr.70629

W.P.No.32143 of 2015

rk[co]
srg 04/01/2017