IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.26358 of 2016
&
W.M.P.No.22597 of 2016

Vysya College,
Rep., by its Secretary,
Ramakrishnapuram,
Masinaickenpatty,
Ayodhiyapattinam (PO),
Salem - 636 103. ... Petitioner

Versus

1. The Government of Tamil Nadu,
   Rep., by its Secretary,
   Rural Development and Panchayat Raj Dept.,
   Fort St., George, Chennai - 600 009.

2. Masinaickenpatty Panchayat,
   Rep., by its President,
   Masinaickenpatty Post,
   Valappadi Taluk,
   Salem District - 636 103. ... Respondents

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondents relating to the demand raised by the second respondent vide order dated 29.09.2015 and quash the same in so far as it relates to collection of surcharge and forbearing the respondents from levying surcharge as contemplated in Explanation-II under Schedule-I to Tamil Nadu Panchayats Act 1994 for the buildings of the petitioner educational institution.

For Petitioner : Mr.Kandhan Duraisami

For Respondents : Mr.Ravi Chandran for R2
Mr.K.J.Sivakumar for R1

O R D E R

Heard Mr.Kandhan Duraisami learned counsel appearing for the petitioner, Mr.K.J.Sivakumar, learned counsel appearing for the first respondent and Mr.Ravi Chandran, learned counsel appearing for the second respondent and with the consent of either side, the writ petition itself is taken up for final disposal.

2. In this Writ Petition, the petitioner is Educational Institution run by an Educational Trust and the petitioner has challenged the levy of surcharge on property tax. The petitioner has separately questioned the authority of the respondent-Panchayat to demand property tax from them on the ground that they are Educational Institution and they are entitled for such exemption.

3. The stand taken by the respondents including the State Government is that the self-finance Engineering Colleges are not entitled for such exemption. The Writ Petition filed by the various Educational Institutions came to be dismissed by a learned Single Judge of this Court, against which, Appeals were preferred before the First Bench in Writ Appeal No.2152 of 2010 etc. batch. By way of interim arrangement, the Division Bench of this Court has passed an order on 17.03.2011, directing the Appellants as well as the Writ Petitioners to pay property tax with effect from 5th March 2008, the date when the amended Rule came into force. Therefore, in all Writ Petitions where interim order of stay was granted, the same was modified by issuing the direction that the Institutions shall pay property tax with effect from 05.03.2008.

4. Mr.Kandhan Duraisami, learned counsel appearing for the petitioner submitted that the petitioner-institution is also covered under the same orders and they have paid property tax with effect from 05.03.2008. In this Writ Petition, the challenge is to the demand of surcharge.

5. The learned Special Government Pleader appearing for the respondents have got instructions from the said Panchayat and would submit that in terms of Schedule 1 as per Section 172(1) of the Tamil Nadu Panchayats Act, 1994, (hereinafter referred as 'Act") and in the explanation contained therein, they are entitled to levy surcharge and it shall be leviable on the house tax at the rates specified in the schedule, which is at 60% for commercial establishments.

6. The respondents have furnished a tabulated statement, from which, it is seen that they have calculated surcharge at 60% of the property tax, which had been done relying upon

Table 2 in Schedule 1 of the Act. The issue would be as to whether at this juncture, the respondent-Panchayat would be entitled to demand surcharge. Section 172 of the Act deals with the levy of house tax and the procedure for levying house tax. So far as the levy of surcharge is concerned, the only provision which refers to the same is Section 168 which speaks of local cess surcharge. The said provision has been omitted by virtue of Tamil Nadu Panchayats (Amendment Act, 2009 - with effect from 06.08.2009). The learned counsel appearing for the respondents have not referred to any other statutory provision by which surcharge is leviable at flat rate, as in the instant case, 60% of the property tax has been levied as surcharge. Surcharge has been defined under various taxation statutes, as a penal levy and the penal levy is on account of non-payment of taxes or on account of belated payment of taxes. This Court, prima-facie is of the view that by referring to the Explanation in Schedule 1 of the Act, the respondents are not justified in demanding surcharge at flat rate of 60%. However, this issue is left open to be decided later on, since the larger issue as to whether the petitioners-institutions are entitled for exemption from property tax, is pending consideration before the Division Bench of this Court. That apart, certain Institutions have also approached the Hon'ble Supreme Court as against the dismissal of their cases and the Hon'ble Supreme Court in Special Leave Petition No.20031 of 2012, which had been filed against the order in Writ Appeal against the judgement dated 20.10.2010 in W.A.No.505 of 2007, has granted leave.

7. In the light of the above, the petitioner-institution shall continue to pay the property tax in terms of the interim order granted by the Division Bench of this Court in W.A.No.2152 of 2010, etc. batch, dated 17.03.2011 and also pay the library cess which is levied at 1% of the property tax upto date. So far as the surcharge is concerned, it appears that the petitioner has effected part-payments. Therefore, whatever payments which have been made towards surcharge, need not be refunded at this juncture, nor it is required to be adjusted as of now. The respondent-Panchayat shall not levy any surcharge and they shall await the decision of the Hon'ble Division Bench of this Court or the Hon'ble Supreme Court whichever is earlier, where the larger issue as to whether the petitioner-institution is entitled for the benefit of exemption, is pending consideration.

8. The learned counsel for the petitioner submitted that the petitioner-institution has been regularly remitting the property tax and for instance, with regard to Kaaveri Educational Trust (petitioner in W.P.No.8160 of 2016), they have paid property tax from the assessment year 2013-2014, and the property tax has been abruptly increased from Rs.4,64,325/- to Rs.13,74,305/-.

9. In the light of the above, the petitioner-institution is at liberty to challenge the increase of property tax by availing remedies available under the provisions of the Act and this can be done by the petitioner without prejudice to the rights in the pending Writ Petition as well as Appeals, wherein the larger issue with regard to levy of property tax is put to challenge. In the light of the above, the respondents are directed to issue a revised demand giving break-up details. The above direction shall be complied with by the respondent-Panchayat, within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the petitioner should be granted reasonable time to comply with the revised demand of property tax. With the above direction, this Writ Petition stand disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pbn

To

1. The Secretary,
   Government of Tamil Nadu,
   Rural Development and Panchayat Raj Dept.,
   Fort St., George, Chennai - 600 009.

2. The President,
   Masinaickenpatty Panchayat,
   Masinaickenpatty Post,
   Valappadi Taluk,
   Salem District - 636 103.

+1cc to Mr.Muthumani Doraisami, Advocate, S.R.No.60376
+1cc to Mr.Ravi Chandran, Advocate, S.R.No.60719

W.P.No.26358 of 2016

CA(CO)
CA(18/11/2016)