IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 04.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.1185 of 2011
M.P.No.1 of 2011

The Executive Officer,
Perodu Panchayat,
Erode District. ... Appellant/5th Respondent

-vs-

1. Amman Arts and Science College,
rep., by its Correspondent,
T.Jayalakshmi,
Perodu Panchayat,
Erode District. ..1st Respondent/Petitioner

2. The State of Tamil Nadu,
Rep., by its Secretary,
Rural Development and
Local Administration Department,
Fort St. George, Chennai-9.

3. The Collector,
Erode District, Erode.

4. The Executive Officer,
Pichandanpalayam Panchayat,
Erode District.

5. The Executive Officer,
Koorapalayam Panchayat,
Erode District. ... Respondents
(Respondents 4 and 5 are given up)

Writ Appeal filed under Clause 15 of Letters Pattent, against the order dated 09.03.2009 in W.P.No.3155 of 2005. praying for issue of a writ of certiorarified Mandamus calling for the records relating to the proceedings of the 2nd respondent in Na.Ka. No.8475/2004 A4 dated 6.1.2005 and quash the same and consequently directing the respondents not to levy of or collect any property tax in respect of the building used by the petitioner for educational purposes and hostel.=

For Appellant : Mr.V.Ayyadurai

For Respondents 2&3: Mr.K.V.Dhanapalan,
Spl. Govt. Pleader

JUDGMENT

[Judgment of the Court was made by S.MANIKUMAR, J.]

Challenge in this writ appeal, is to an order, made in W.P.No.3155 of 2005, dated 09.03.2009, by which, following a Hon'ble Division Bench order of this Court in Sriram Educational Trust, rep., by its Chairman v. The President, Thiruvallur Taluk & District reported in 2008 (3) MLJ 351, quashed the proceedings of the District Collector, Erode, 3rd respondent herein, in Na.Ka.No.8475/2004/A4, dated 06.01.2005 and further directed that any amount of tax paid in the past, the same need not be refunded by the Panchayats. W.P.No.3155 of 2005, is filed by M/s.Amman Arts and Science College, Perodu Panchayat, Erode District, which is one of the batch of writ petitions, disposed of.

2. Being aggrieved by the same, the instant writ appeal has been filed by Perodu Panchayat, on the grounds, inter alia that the writ Court has failed to consider that the self financing educational institutions, like that of the writ petitioner, is not exempted from paying property tax, as per the law, which existed, on the date of consideration of the case.

3. As per the amendment to Rule 15 of the Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999, issued in G.O.Ms.No.38, Rural Development and Panchayat Raj Department, dated 05.03.2008, which are reproduced hereunder:

NOTIFICATION

In exercise of the powers conferred by sections 171, 172, 174, 176 and sub-section (1) of section 242 of the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994), the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999:-

AMENDMENTS

In the said Rules, in rule 15,-

(1) for clause (c), the following clause shall be substituted, namely:-

"(c) buildings used for educational purposes including hostels and libraries run by the Government or local bodies and institutions aided by the Government and public buildings used for charitable purpose of sheltering the destitutes or animals;";

(2) in the first proviso, for the expression "clauses (a) and (c)", the expression "clause (a)" shall be substituted;

(3) after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that the buildings used for educational purposes by Government-aided institutions, for conducting self-financing unaided courses shall be subject to levy of house-tax:".

4. The Writ Court has failed to consider the common order made in W.P.No.7607 of 2008 etc., dated 27.08.2008, which interpreted the amendment to the rules.

Heard the learned counsel appearing for the parties and perused the materials available on record.

5. When demand of notices for property tax, in respect of building for educational purpose, owned by the unaided educational institutions, came up for consideration and while interpreting the old Rule 15(c) of the abovesaid Rules, a learned single Judge of this Court held that such buildings fall within the purview of Rule 15(c) and therefore, they are exempted from house tax. Another learned Judge of this Court held otherwise, stating that the building owned by the educational institution, used for educational purpose, do not fall within the purview of Rule 15(c) and therefore, they are not exempted from paying house tax.

6. Earlier, when there was conflict of judgments and when the matters were referred to a Hon'ble Division Bench, after considering the rule and several judgments, a Hon'ble Division Bench of this Court in Sriram Educational Trust, rep., by its Chairman v. The President, Thiruvallur Taluk & District reported in 2008 (1) CTC 449, rendered a decision on 07.01.2007, as follows:

"In the above circumstances we allow the writ appeals and the writ petitions holding that on a plain reading of Rule 15(c), the dominant object or the use of the building for educational purposes alone decides the claim for exemption and nothing more or less is required. Rule 15(c) is in an unqualified term. There are no words of restriction attached to the portion dealing with educational purposes. In the above circumstances, we do not agree with the view expressed by Justice P.K.Misra and affirm the view of Justice P.Jyothimani in the decision reported in (2006) 3 MLJ 1068 (KAMARAJ COLLEGE OF ENGINEERING AND TECHNOLOGY, MANAGING BOARD, REP. BY ITS SECRETARY, VIRUDHUNAGAR Vs. PRESIDENT, K.VELLAKULAM PANCHAYAT, MADURAI DISTRICT), as stated in the preceding paragraph. Hence, we set aside the orders impugned herein dated 30.4.2003 thereby allow the writ appeal and the writ petitions. Connected Miscellaneous Petitions are also dismissed."

7. Firstly, material on record does not disclose, as to whether, the common order, dated 27.08.2008, made in W.P.Nos.7607 of 2008, etc. batch, was brought to the notice of the Writ Court in W.P.No.3155 of 2005, filed by M/s.Amman Arts and Science College, Erode District and others. Secondly, the order impugned in this writ appeal, is for the period between 2000 and 2005, amounting to Rs.55,240/-. Amendment issued to Rule 15(c) is on 05.03.2008. Thirdly, the order impugned before us, is based on a Division Bench judgment, which is binding on the writ Court.

8. After going through the material on record, Mr.V.Ayyadurai, learned counsel for the appellant submitted that as on the date of filing of the appeal, there are no merits. Placing on record the said submission, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1. The Secretary & Government,
Rural Development and
Local Administration Department,
State of Tamily Nadu,
Fort St. George, Chennai-9.

2. The Collector,
Erode District, Erode.

3. The Executive Officer,
Pichandanpalayam Panchayat,
Erode District.

+ 1 cc to Mr. P. Muthukumarasamy, Advocate Sr.46393

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GJII(CO)
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