

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.08.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
24.07.2017	08.08.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13489 of 2017

and

W.M.P.No.14561 of 2017

Sundaram Medical Foundation,
Dr.Rangarajan Memorial Hospital,
Shanthi Colony, 4th Avenue,
Anna Nagar, Chennai-600 040,
Rep.by its Trustee & Director-
Administration T.N.P.Durai

..Petitioner

Vs.

1 The Commissioner
Corporation of Chennai,
113, Rippon Buildings,
Periyar EVR Salai, Chennai-600 003.

2 The Regional Deputy Commissioner (Central),
Corporation of Chennai, Zone-8,
No.36 B, Pulla Avenue,
Shenoy Nagar, Chennai-600 030.

3 The Assistant Revenue Officer-VIII,
Greater Corporation of Chennai,
Zone-8, No.36 B, Pulla Avenue,
Shenoy Nagar, Chennai-600 030.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India

praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to Order dated 17.12.2015 bearing Z.o.VIII.R.D.C.No/1737/15 issued by the second respondent and the consequential Notice dated Nil, bearing Bill No. 04885 issued by the third respondent and quash the same and consequently direct the First Respondent to pass orders of exemption under Section 101(e) of the Chennai City Municipal Corporation Act, 1919 in respect of its premises at Sundaram Medical Foundation, Dr.Rangarajan Memorial Hospital, Shanthi Colony, 4th Avenue, Anna Nagar, Chennai-600 040.

For Petitioner : Mr. Srinath Sridevan.

For Respondents : Mr. K.Venkataramani,
Additional Advocate General,
assisted by Mr.P.V.Selvakumar.

ORDER

The Petitioner is a Trust created under the Declaration of Trust, dated 29.11.1990, with an object to provide medical relief and facilities to the poor and needy irrespective of caste, creed and religion either free of cost or at concessional rates and to others on such terms and conditions, but not for the purpose of profits. Thus, the Trust has been created as a Public Charitable Trust.

2. The petitioner submitted applications to the Government dated 07.01.1991, and dated 25.03.1992, seeking allotment of lands for the purpose

of establishing a hospital offering free/concessional medical service to needy and desirous persons. The Government vide G.O.Ms.No.460, Revenue department, dated 10.04.1992, allotted an extent of 2542 sq.mts of land in Anna Nagar, Chennai, for the purpose of setting up of a hospital. Condition was imposed that the hospital should provide free treatment to 30% of the outpatients and 15% of the inpatients belonging to the poor families and 15% of the total beds in the hospitals should be reserved for poor inpatients.

3. The petitioner claims that they have established the hospital and have been running the hospital in accordance with the terms of the conditions imposed by the Government. While so, the first respondent corporation sought to levy property tax on the building with effect from first half year 1992-93, immediately the petitioner addressed a letter to the first respondent on 14.12.1994, pointing out that it is a charitable hospital and therefore, exempted from the levy of property tax in accordance with Section 101(e) of the Chennai City Municipal Corporation Act, 1919 (herein after referred to as the Act). Ultimately, the Corporation appears to have not acceded to the petitioner's request and they were assessed to tax and a demand was issued on 28.03.2002 and another demand on 02.07.2005.

4. The petitioner challenged the proceedings, which ultimately went up

to the Taxation Tribunal in TAT No.112/2006 and the petitioner had deposited a sum of Rs.25,35,494/- which is stated to be still in the hands of the respondent Corporation. The appeal was dismissed by the Tribunal by order dated 19.06.2006. Aggrieved over which, the petitioner preferred an appeal before the Principal Judge, City Civil Court in MTA No.21 of 2006. The said appeal was allowed by judgment, dated 27.08.2007 and the matter was remanded back to the first respondent for considering the issue of eligibility of the petitioner for exemption under Section 101(e) of the Act. After such remand, the first respondent passed an order, dated 12.08.2008, refusing to grant exemption, which was challenged by the petitioner in W.P.No.21084 of 2008 as being a cryptic order. The said writ petition was allowed by order dated 28.08.2008 with a direction to the first respondent to reconsider the matter on merits and pass fresh orders within a time frame. Once again, the claim for exemption was rejected, by order dated 27.01.2009, which was challenged by the petitioner in W.P.2383 of 2009 and the said Writ Petition was allowed by order dated 12.01.2015, directing the first respondent to examine the claim for exemption in accordance with the judgment in MTA No.21 of 2006. Pursuant to the said order, the second respondent by communication dated 19.03.2015, directed the petitioner to appear for a personal hearing with all records. The petitioner is stated to have appeared before the second respondent on 06.04.2015, during which the petitioner was

asked for the list of beneficiaries for the year 2014-15, which were furnished by the petitioner on 21.04.2015, followed by a further representation, dated 23.04.2015, enclosing photographs etc. The petitioner vide their letter dated 04.05.2015, enclosed a copy of the trust deed and the order of exemption granted under the Income Tax Act, 1961. Thereupon, the second respondent adjourned the enquiry to 11.05.2015, which was cancelled and re-fixed on 23.06.2015, to examine the list of beneficiaries and the petitioner's balance sheet.

5. The petitioner is stated to have furnished all details pertaining to the outpatients and inpatients, copy of the Government Order allotting the land, number of beds, tariff and Income Tax returns. The petitioner would state that they were under the impression that the first respondent, namely, the Commissioner of the Corporation would be exercising the power under the Act. While so, on 14.07.2015, an inspection was carried out by the officials of the first respondent and sample bills of the inpatients, details of the total area and area of the inpatients room etc., was called for and which were furnished by the petitioner on 22.07.2015 and 03.08.2015. It is thereafter, the second respondent by order dated 17.12.2015, rejected the claim for exemption, for the reason that only 15% of the patients get free treatment and therefore, the petitioner is not a charitable hospital within the meaning of Section 101(e) of

the Act. This order is impugned in this Writ Petition.

6. Mr.Srinath Sridevan, learned counsel for the petitioner after referring to the relevant documents filed in the typed set of papers to substantiate the factual averments, submitted that the petitioner established the hospital in accordance with the conditions imposed by the Government and have been administering the hospital strictly as per the conditions and till date, they have not been questioned by the Government. In this regard, reference was made to clause (3) and (4)(ii)&(iii) of G.O.Ms.No.460 and submitted that the petitioner has been providing free treatment in terms of the conditions imposed in the said order. It is further submitted that the Principal Judge, City Civil Court, while allowing the petitioner's appeal in MTA No.21 of 2006, had referred to the documents produced by the petitioner and assigned reasons, as to why the matter has to be remanded for fresh consideration and issued specific direction to the Commissioner to give opportunity to the petitioner for production of oral and documentary evidence in support of their claim for exemption. It is submitted that inspite of such specific directions, the first respondent by a cryptic order, dated 12.08.2008, rejected the claim for exemption. This was challenged by the petitioner and the Writ Petition was allowed and the matter was remanded back for fresh consideration in the light of the order passed in MTA No.21 of 2006. Once again, by an order dated 27.01.2009 without adhering to the directions issued in MTA No.21 of 2006, the

claim for exemption was rejected, and the petitioner challenged the same by filing a Writ Petition which was allowed with a direction to consider the matter afresh. After the matter was remanded for the third time, the second respondent directed the petitioner to appear for a hearing and the petitioner co-operated with the proceedings and produced all the documents and details called for by the respondent including the deed of Declaration of Trust, dated 29.11.1990, the registration granted under Section 12A of the Income Tax Act, 1961 etc. Though the petitioner had produced all these voluminous records, the first respondent did not consider the application, but the second respondent has passed the order and there is nothing on record to suggest that the second respondent has been delegated with the powers to consider the petitioner's application for exemption and while passing the impugned order, the second respondent did not consider any of the aspects and rejected the claim solely on the ground that the petitioner is giving only 15% free medical treatment for the poor people and charging fees for 85% of the patients.

7. It is submitted that aggrieved by such order, the petitioner preferred an appeal before the Taxation Appeal Tribunal, but appeal petition was returned stating that the petitioner can present the appeal along with the demand for enhanced property tax and not otherwise. Therefore, the petitioner has approached this Court by way of this Writ Petition. It is

submitted that in the light of the above factual position, it is evidently clear that the respondent Corporation has not considered the petitioner's application for exemption as required to be considered and has been repeatedly rejecting the same by cryptic orders and therefore, prayed that positive directions to be issued to the respondent Corporation to grant exemption from payment of property tax.

8. Further it is submitted that when the fact remains thus without even a, assessment, a demand has been served on the petitioner demanding a sum of more than Rs.34 lakhs, as property tax which is not sustainable in law. To support such contention, reliance was placed on the decision of this Court in the case of **G.P.Venkatesa Mudaliar Vs. The Commissioner, Corporation of Chennai** reported in (2009) 2 MLJ 702. With regard to how an application for exemption is required to be dealt with, reliance was placed on decision of Hon'ble Division Bench of this Court in the case of **S.N.R. Sons Charitable Trust vs. The Commissioner, Coimbatore City Municipal Corporation, Coimbatore, 1993 (2) MLJ 154**, and the decision of the High Court of Karnataka, in the case of **Society of Jesus, Mary and Joseph, Bangalore and Anr. Vs. Bangalore Mahanagar Palike and Ors.** reported in AIR 2002 KAT31.

9. Mr.K.Venkataramani, learned Additional Advocate General assisted by

Mr.P.V.Selvakumar, learned Standing Counsel for the respondents submitted that as per the directions issued in MTA No.21 of 2006, the representation for exemption was considered and the same was rejected, since the petitioner is only giving treatment to 15% of poor people and not running the hospital totally for poor. It is further submitted that after the order in W.P.No.21084 of 2008, dated 28.08.2008, opportunity of personal hearing was given and thereafter an order was passed on 27.01.2009, rejecting the petitioner's application. This order was once again challenged by the petitioner in W.P.No.2383 of 2009 and a direction was issued and in compliance with the direction, personal hearing was conducted on 06.04.2015 and 21.04.2015, and a joint inspection was made by the Revenue officials and after duly considering the petitioner's claim, final orders were passed. It is further submitted that the petitioner has not paid property tax from the first half year 2008-09 and the total amount payable by the petitioner is more than Rs.1,00,00,000/-. It is further submitted that the respondent corporation carries out welfare measures for the general public in the city based on the revenue generated out of the property tax and if the arrears runs to crores of rupees, it will put the respondent Corporation in financial difficulty.

10. The learned Additional Advocate General referred to the counter affidavit and the additional counter affidavit filed by the third respondent and

after referring to the conditions imposed in G.O.Ms.No.460, dated 10.04.1992, submitted that the respondent Corporation has not exempted any of the hospital within the Chennai City limits, from payment of property tax under section 101 (e) of the said Act. Therefore, it is submitted that the petitioner should be directed to pay the property tax and clear the entire arrears and continue to pay the tax as determined by the respondent corporation.

11. In reply, the learned counsel for the petitioner referred to the reply affidavit to the counter affidavit filed by the respondent corporation and referred to the various charitable activities carried on by the petitioner hospital and merely because, the respondent Corporation has not exempted any hospital in Chennai city from the levy of property tax, it cannot be a ground to deny exemption to the petitioner's property. It is further submitted that until 2007, the petitioner has paid a sum of Rs.32,43,755/- as property tax and the matter pertaining to exemption has been under consideration since 2007 and therefore, no further amounts were paid as property tax. Therefore, it is submitted that the petitioner is entitled to grant of exemption from levy of property tax.

12. Heard the learned counsels appearing for the parties and perused the materials placed on record including the note file maintained by the third

respondent.

13. Before I go into the factual aspects, it may be necessary for this Court to examine the power granted to the respondent Corporation under the Act to exempt properties from the levy of property tax. Section 101 of the Act deals with 'General Exemptions', it states that the buildings and lands which are listed out under the said provisions are exempt from the property tax. Clause (e) of section 110 would be relevant which states that the buildings and lands of charitable hospitals and dispensaries, but not including residential quarters attached thereto, shall be exempt from property tax. Therefore, an organization, which is running a charitable hospital or a dispensary would be entitled to exemption from levy of property tax on the building, which is used for the hospital or dispensary, but not for the residential quarters attached to the said building. The provisions of the Chennai City Municipal Corporation Act do not provide for a procedure, as to how a person claiming that his land or building is used for a charitable hospital or a dispensary has to be assessed, what would be the mechanism that has to be adopted by the respondent Corporation to ascertain as to whether the applicant qualifies for grant of exemption from property tax. In the instant case, the Government, on a request made by the petitioner trust, allotted land measuring an extent of 2542sq ft in survey No.4/2 block No. 9C of Naduvakkarai village, for setting up

a hospital. The Government Order in G.O.Ms.No.640, states that the Government have examined the request of the petitioner and was satisfied that the allotment of the land to the institution in question will subserve common good. Therefore, the Government accepted the recommendation of the Allotment Committee and issued an order under Section 24(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, subject to certain conditions. Conditions which would be relevant for the purpose of this case are condition nos.2 and 3 which reads as follows:

ii) The foundation shall provide free treatment to 30% of the out patients;

iii) The foundation shall also provides free treatment to inpatients belonging to poor families and for this purpose to reserve 25% of the total number of beds for such patients.

14. Thus the land which was declared as a surplus at the hands of the original owner and vested with the government was allotted by the government to the petitioner Trust vide the said Government order, subject to certain conditions, two of which pertain to the nature of treatment, that they should accord to the outpatients and inpatients.

15. The percentage being 30% of out patients and 25% of the beds for inpatients should be given free. There is nothing on record to suggest that the

Government has taken any action against the petitioner for not adhering to the above referred conditions and not exercised their power under para 4 (9) of the said Government order, which empowers the Government that in the event the petitioner is not complying with any of the conditions of allotment, the Government shall, after giving an opportunity to the petitioner to be heard in the matter, cancel the allotment and the land shall re-vest to the Government free from all encumbrances and no compensation shall be payable in respect of the any building or superstructure constructed on such land in the case of the land re-vesting to the Government under the said clause. As stated, the Government has not alleged that the petitioner has violated the terms and conditions of the Government Order, as there appears to have been no action initiated in that regard. Thus, for all purpose, it should be taken that the petitioner has been complying with the conditions of allotment. This interpretation alone would be proper, because, it will be the Government, which has to take action in the event of violation of conditions imposed in the Government order.

16. Having steered clear of the statutory and factual position and after having taken note of the important aspects that the provisions of the Municipal Corporation Act do not provide for a rule or regulation as to how a plea for exemption should be considered, we have to necessarily fall back on other

taxation statute, where plea of exemption is considered under a statute, which are *para materia* to the Municipal Corporation Act. Useful guidance is available in the decision in ***S.N.R Sons Charitable Trust*** (supra). The appeal was at the instance of the Trust challenging an order dismissing a writ petition questioning a demand and assessment notice issued to the SriRamakrishna Hospital, Coimbatore, which was established by the appellant Trust. The appellant therein sought for exemption from property tax from the respondent therein, which was granted under the Tamil Nadu District Municipalities Act with effect from 01.04.1977, excluding the office, canteen, Doctors' residential quarters and Nurses quarters, for which separate assessment was made. This position continued till 30.09.1980, when a special notice, dated 31.03.1981, was issued to the appellant therein proposing to revise the earlier assessment with half year commencing from 01.10.1980, revising the annual value. The appellant referred to the exemption which was granted to them from property tax for the period from 01.10.1980 to 31.03.1982 and also referred to the grant of exemption under section 80 (g) of the Income Tax Act as well as exemption from payment of Urban Land Tax Act and a certificate from the District Collector to the effect that the hospital was run by them, was doing charitable and relief work and 40% of the outpatients cases are treated completely free of charges and even for inpatients whose income was less than Rs.300/- were given free accommodation, bed and linen, medical and nursing care including

investigations, medicines, operations and diet. Therefore, it was contended that they are justified in seeking exemption. However, no orders were passed but the respondent demanded property tax at an enhanced rate. Therefore, Writ Petition was filed challenging such demand.

17. The respondent therein resisted the Writ Petition contending that on inspection being made of the hospital, it was found that the appellant therein was collecting rent from persons who are occupying the hospital rooms and charges were also collected from outpatients and therefore cannot be permitted to take advantage of Section 123(e) of the Coimbatore City Municipal Corporation Act (in *para materia* with section 101(e) of the CMCC Act). The Writ Petition was dismissed, against which the appeal was preferred. The Hon'ble Division Bench, while allowing the appeal pointed out that from the manner in which, the charges have been collected under different heads, it is difficult to hold that such charges have been paid by way of rent by the patients visiting the hospital for the purposes of treatment. That the amounts paid by the patient cannot be equated or treated as 'rent', but represent charges paid for all the services rendered under different heads and these payments cannot on the facts and circumstances of the case be regarded as payment of rent by the patients. Further noting that the word 'rent' has not been defined in the said Act, the intention of the legislature was that question

should be decided on consideration of facts of each case when a controversy over it arose. Therefore, it was held that the meaning of the word rent has to be gathered from Section 117 of the said Act, which falls in chapter V relating to Taxation and refers to levy of property tax by the council. After noting Section 123 (e) of the said Act, it was pointed out that the said provision exempts from property tax, charitable hospitals and dispensaries, but not including residential quarters attached thereto. Though as a charitable hospital, the building may be entitled to benefit of exemption, the availability of such exemption, is further qualified by the proviso with regard to building or land from which rent is payable by the person using it. Thus, considering the scope of exemption and with reference to the buildings and other cases, it was held that the building or property cannot at all be let out for rent and that perhaps is the reason why they have not been included in the proviso, excepting cases falling under clause (a),(b) and (c) of the Section 123 of the said Act.

18. With reference to buildings falling under clause (e), it was pointed out that there is a possibility of the place being made available for use by others on payment of rent for such an event, the benefit of exemption may not be available. With regard to the Hospital, if it is let out to others on rent, exemption is not available. In the said case, the amounts paid by the patients

who use the hospital as well as the range of services provided by it, cannot be regarded as “rent” paid by them in the narrower sense. Finally, it was held that the payment made by the patients to the hospital by way of hospital charges, or stoppages or even service charges, cannot be equated to rent and denial of benefit of exemption to the appellant on that score cannot be sustained.

19. In the case of ***Society of Jesus***, (supra), the question which arose for consideration was, what is a charitable hospital and dispensary for the purpose of Section 110(e) of the Karnataka Municipal Corporation Act, 1976. After noting that nowhere in the Karnataka Act, Charitable hospital and dispensary has been defined, the Court referred to the dictionary meaning as well as Section 2(15) of the Income Tax Act, which defines charitable purposes to include relief of the poor, education, medical relief and the advance of any object of general public utility. After discussing further on what would mean 'charitable', the Court held as follows:

7.....The object of establishment and continuance of the hospital and the dispensary must, for all purposes, strictly conform to the requirements of what is understood as 'charity' and a 'charitable' act. Therefore, while considering the question whether a hospital or a dispensary is a charitable hospital/dispensary or not, what is required to be considered is as to what is the object of establishing such

a hospital/dispensary and as to how it is being run and what is the purpose of its continued existence whether it is meant to relieve the hardship and extends medical facilities to the poor and the needy or it is meant to oblige the rich and the affluent who do not require any financial assistance in the form of free medical treatment or it is being run as a commercial venture; and whether such hospital/dispensary has been established and is being continued to support the needs of any particular caste or a religious faith. In my view, three conditions, which are required to be satisfied to get the benefit of exemption under [Section 110\(e\)](#) of the Act are, (1) the doors of such hospitals/dispensaries should be always kept open to all persons irrespective of any caste, creed, religious faith or sects; (2) such persons should be poor, needy and deserving persons who, on account of financial incapacity, are not in a position to get medical aid by paying money; and (3) the process of selection of patients for treatment among the three classes, referred to above, must be objective, transparent, fair, reasonable and free from any arbitrariness. That does not mean that for the purpose of running a charitable hospital/dispensary, if the facilities in the hospital are made available to the affluent and rich patients and if they are charged for the services rendered with a view to organise funds required to such a hospital, such a hospital will not lose the characteristic of a charitable hospital/dispensary. I am unable to accede to the contention of Sri Haranahalli that it is only such of those hospitals and dispensaries which totally give free medical aid and which do not collect any charges from patients either in-patient or out-patient, which can be treated as charitable hospitals and dispensaries and are entitled for exemption under [Section 110\(e\)](#) of the Act. It is necessary to point out that in a society like ours, where the country is

still a developing country and where large sections of people are poor and not free from hunger and disease, the State alone, out of its revenue, cannot provide free medical aid to all those poor persons who are in need of it. Therefore, presumably, keeping that in view and with a view to encourage charitable attitude among the philanthropists, a provision like [Section 110\(e\)](#) of the Act has been made providing for exemption from payment of property tax in respect of a building and land used as charitable hospital/dispensary. There cannot be any doubt that it is only with a view to facilitate medical aid to the poor and needy and with a view to reduce financial burden of such charitable hospitals and dispensaries, such a provision has been made. The burden of running a charitable hospital and dispensary which is established and continued for the purpose of giving free/subsidised medical aid, can be reduced by various methods, (1) by granting exemption from payment of property tax in respect of the buildings solely used as charitable hospital/dispensary; (2) by raising donations from the rich and affluent; (3) by free service rendered by the doctors and other social groups in the hospital. The resources raised from all these may not be sufficient to cater to the needs of large sections of poor ailing patients who require medical treatment and that too, with the high degree of competency and proficiency and infrastructure developed with all the modern facilities established. For this, one of the modes of raising funds could be by making available some portion of the facilities available in the hospital to affluent and the rich patients and charging them for the services and the treatment given to them. Therefore, if the object of establishing and running a hospital and its continued existence, is to give medical aid to the poor and the deserving either totally free or to a large

extent subsidised, if such a hospital collects substantial charges from the affluent and rich patients put of some portion of the facilities available in the hospital extended to them, in my view, as observed earlier, such hospitals and dispensaries cannot be considered as not charitable hospitals and dispensaries.

20. In ***Municipal Corporation of Hyderabad Vs. Hyderabad Race Club***, reported in AIR 1987 92, the Hon'ble Supreme Court laid down what would be the proper test to find out whether the income from the Race Club was used for a charitable purpose. It was held that the test to apply is to seek an answer to the question; "to what use is, the property put or for what purpose is the property put". To ascertain whether such occupation or user is for charitable purpose. After referring to Section 202 (1) (b) of the Income Tax Act, it was held that the expression "charitable" in the context of the said Section means a benevolent activity calculated to benefit the poor or the deprived. The Court after taking note of the above referred decision as well as certain English decisions held as follows:

8.....To my mind, it appears that if a hospital extends free treatment around 50 (fifty) per cent with little variation to the poor, needy and other patients who, on account of financial constraints, are not able to meet the medical expenses, and the remaining 50 (fifty) per cent or around that, charges are collected from others who can afford to pay, such a hospital or dispensary, would satisfy

the requirement of a charitable hospital and dispensary. However, it is needless to observe that the entire income derived by charging the patients, as stated above, should be solely utilised by the hospital/dispensary for the benefit of the hospital and for the benefit of the poor and the deserving, needy patients. The hospital is permitted to charge and collect money from the rich and affluent only with a view to make the hospital viable and with a view to get the best and qualitative treatment to the poor and the needy whenever it is required by them. Insofar as out-patients are concerned, it would not be permissible for the hospital to limit the extension of the medical facility to a limited number of poor patients. It has to be for all those who approach the hospital seeking free treatment. However, insofar as in-patients are concerned, it could be subject to the availability of the beds and other facilities in the hospital. The funds generated by the hospital by charging the patients has to be utilised, as noticed by me earlier, for the benefit of other poor and deserving patients. This does not mean that an additional income earned, in a particular year, cannot be carried over for future development and to be spent in a near future i.e., within a year or two of such accumulation.

21. This Court had an occasion to consider the validity of a warrant notice issued by the respondent Corporation to Lions Club of Madras, which was occupying a land owned by the Tamil Nadu Slum Clearance Board on a nominal rent of Rs.100 per annum and put up a construction for running a hospital to the public of the area who were slum dwellers. This property was

subjected to assessment of property tax, which came to be challenged. The Court after taking note of Section 110 (e) of the Act and the nature of the activity done by the petitioner Lions Club, held that there can be no doubt that the petitioner organization is a charitable organization carrying on charitable activity in the said building, which has been certified by the officials themselves, vide G.O.Ms.No.88, which would be binding on the Government and accordingly allowed the Writ Petition.

22. As pointed out earlier, the Chennai Municipal Corporation Act does not provide for a mechanism as to how a property has to be considered whether being eligible for exemption under Section 110 (e) of the Act. Therefore necessarily the Court has to look into the other provisions as was done by the High Court of Karnataka, in the case of *Society of Jesus* (supra). Section 12A of the Income Tax Act states that the provisions of Sections 11 and 12 of the Act shall not apply in relation to the income of any Trust or Institution unless the conditions enumerated in clause (a) to (c) are fulfilled.

23. The Commissioner of Income Tax, while examining an application for registration made in accordance with Section 12A has to see whether the objective of the Trust are charitable or not for the purpose of the trust and its activities are genuine, registration is mandatory, while examination will

depend upon the application of income under section 11 (1) (a) of the Act. For the purpose of Section 12(a), the authorities should look into the genuineness of the activities of the trust and how the income is applied to the objective of the trust and they are not concerned, as to how the income has been derived by the Trust. Therefore, the stand taken by the respondent Corporation stating that only 15% of the patients are given free treatment, may not be a reason for outrightly rejecting the claim for exemption.

24. As pointed out in ***Society of Jesus*** (supra), the funds generated by the Hospital by charging patients can be utilized for the benefit of the poor and deserving patients and thus would not mean that if an additional income is earned in a particular year, it cannot be carried over for future development and to be spent in the next few years. Therefore, it requires a holistic approach on the part of the respondent Corporation to determine as to whether a property is entitled for exemption in full or partial exemption or no exemption at all. Definitely such conclusion cannot be arrived at in the manner done by the second respondent in the impugned order. The respondents have not produced any documents to show that the second respondent has been delegated with the powers of the Commissioner to consider exemption. Even assuming such power has been conferred, the direction issued at the very first instance in MTA No.21/2006 was to the

Commissioner, the two subsequent directions issued by this Court was also to the Commissioner and therefore, the commissioner and he alone would be entitled to consider the claim of the petitioner for exemption of property tax.

25. The petitioner has filed a reply affidavit setting out as many as 12 activities, which are charitable activities done by them and in particular to combat terminal illness. As observed by this Court, the consideration should be holistic to mean that all relevant factors be taken into consideration. It may require a team of persons to consider as to whether the activities of the petitioner, are charitable to qualify for exemptions under Section 101 (e). Collection of statistics or sample bills from a few patients or perusal of certain records during the course of inspection by the subordinates of the second respondent is not the manner in which the claim for exemption should be considered.

26. It has to be pointed out that the second respondent or that matter the officials of Corporation of Chennai have failed to understand the purport and scope of the directions issued by this Court in the earlier Writ Petitions. To examine as to whether there were any proper examination of the facts by the respondent, this Court called for the note file and perused the same. To say the least, there is nothing there in the file to indicate that a procedure was adopted or a process was followed to conclude that the petitioner is not

entitled for exemption. Though at the first blush, it appears as if, the impugned order is a speaking order, closure scrutiny shows that it is devoid of any application of mind. The officer has extracted whatever has occurred earlier, the orders passed by this Court referred to the build up area, usage, occupancy and rejected the application solely on the ground that it was given free treatment only to 15%. The Chennai City Municipal Corporation Act does not prescribe any percentage. Probably, the respondent Corporation were swayed by the percentage fixed by the Government in GO.Ms.No.460, while allotting the land. There is no allegation against the petitioner that they have violated the conditions of allotment and the Government has not taken any action. Therefore what would be the proper percentage for qualifying for exemption from property tax has to be decided. At best the percentage fixed in G.O.Ms.No.460 would be an indicator. There may be a situation where even offering lesser percentage of free treatment, would still qualify for exemption, because of the specialized type of treatment offered free. Therefore, the percentage should not be misunderstood as purely a numerical figure. Thus, the respondent Corporation should take note of all the above observations how the Courts have approached the matter what other statute say and then examine the plea of the petitioner. Though the petitioner seeks for a positive direction to grant exemption, such relief cannot be granted in a Writ Petition under Article 226 of the Constitution of India, as it requires thorough and deep

scrutiny of the various documents and records that the petitioner will produce. Therefore, necessarily matter has to be remanded to the respondent corporation for fresh consideration.

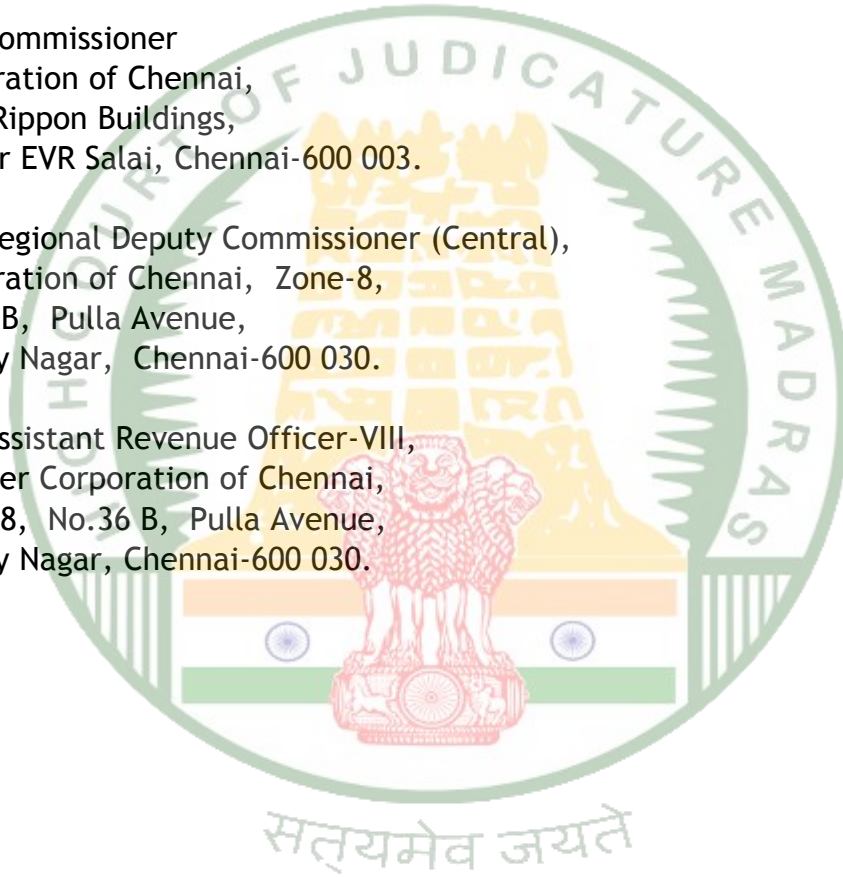
27. For all the above reasons, the Writ Petition is allowed, the impugned order is quashed and the matter is remanded to the first respondent for fresh consideration, who shall consider the plea for exemption a fresh uninfluenced by any of the observations made by his subordinates in the earlier order or the file notings and take note of the observations made by this Court, the legal principles, which have been adopted by the various Courts as indicated above and approach the matters in a holistic way regardless of the fact that no other Hospitals in Chennai City has been granted exemption and consider the plea in an effective manner after affording an opportunity of personal hearing to the authorized representative of the petitioner and conducting appropriate inspection etc. The above direction be complied with as expeditiously as possible and at any event of the matter, not later than six months from the date of receipt of a copy of this order. Till then no coercive action shall be initiated against the petitioner for demand of property tax. No costs. Consequently, connected miscellaneous petition is also closed.

08.08.2017

pbn/sli
Index:yes/no
Internet:yes/no

To

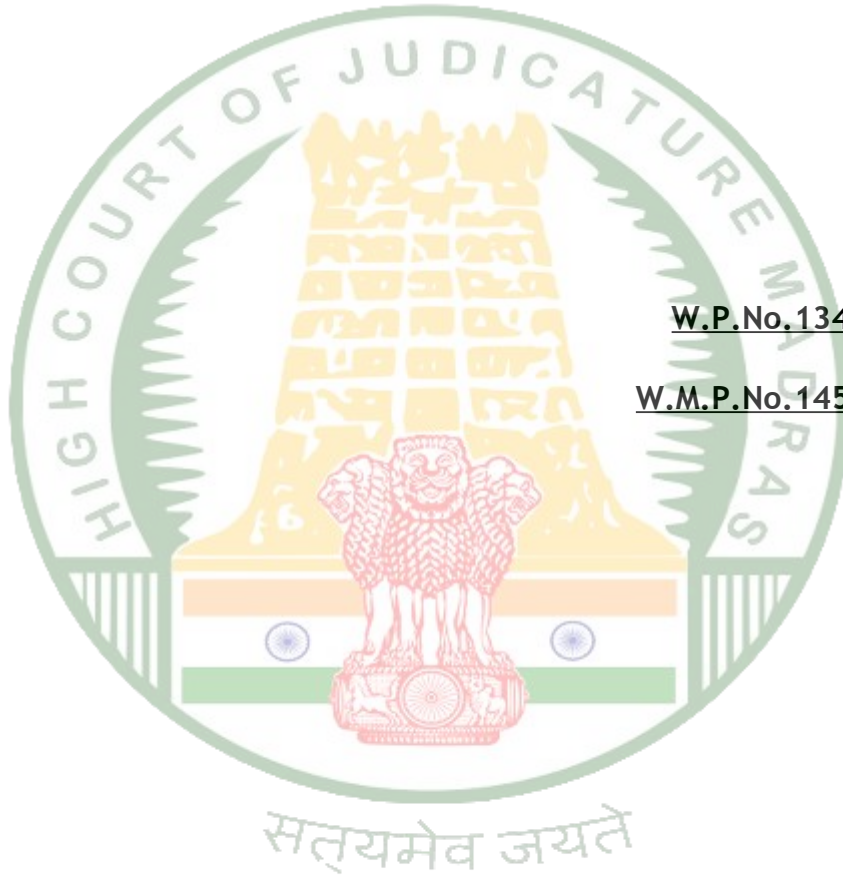
- 1 The Commissioner
Corporation of Chennai,
113, Rippon Buildings,
Periyar EVR Salai, Chennai-600 003.
- 2 The Regional Deputy Commissioner (Central),
Corporation of Chennai, Zone-8,
No.36 B, Pulla Avenue,
Shenoy Nagar, Chennai-600 030.
- 3 The Assistant Revenue Officer-VIII,
Greater Corporation of Chennai,
Zone-8, No.36 B, Pulla Avenue,
Shenoy Nagar, Chennai-600 030.



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T.S.SIVAGNANAM, J

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W.P.No.13489 of 2017
and
W.M.P.No.14561 of 2017

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