aAzxIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **27.06.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**
and
THE HONOURABLE MR.**JUSTICE M.V. MURALIDARAN**

W.A.No.14 of 2013
and
M.P.No.1 of 2013

The Commissioner
Thiruthuraipoondi Municipality
Thiruthuraipoondi
Tiruvarur District. ...Appellant

Vs

1.St.Antony's Matriculation School
Rep. by its Principal
P.Vincent Arokyaraj
Arasaladi Dravidar Street
Tiruvarur Road
Tiruthuraipoondi
Tiruvarur District.

2.The Regional Director
Municipalities
Thanjavur. ...Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order of this Court in W.P.No.7847 of 2004 dated 02.04.2009.

For Appellant : Mr.A.Ilango

For Respondents : Mr.K.Dhananjayan,
Special Government Pleader [for R2]

J U D G M E N T

K.K.SASIDHARAN,J.

This intra court appeal is directed against the order dated 02 April 2009 in W.P.No.7847 of 2004, quashing the demand made by the appellant calling upon the first respondent to pay the property tax.

2. The first respondent is running an educational institution. The application submitted by the first respondent for exemption from payment of tax, treating it as an educational institution was rejected by the appellant. Thereafter, the appellant assessed the first respondent and issued an order of assessment dated 02 December 2003. The said order was challenged before the Writ Court in W.P.No.7847 of 2004.

3. The learned Single Judge, by placing reliance on Section 80(1)(c) of the Tamil Nadu District Municipalities Act, 1920 and the judgment in **Sriram Educational Trust rep. by its Chairman vs. The President, Thiruvallur Taluk & District [2008 (3) MLJ 351]** allowed the writ petition; and quashed the demand. The order is under challenge in the intra court appeal.

4. The learned counsel for the appellant contended that the law laid down in **Sriram Educational Trust's** case (cited supra), is no longer a good law, in view of the decision of the Full Bench in **the President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District vs.**

Kamaraj College of Engineering and Technology, Virudhunagar [2009-5-L.W.193]. The learned counsel further contended that without disclosing the order passed by the Municipality rejecting the claim made for exemption, the first respondent filed the writ petition. According to the learned counsel, the application submitted by the educational institution for exemption has to be considered by the Municipality in the light of Section 80(1)(c) of the Tamil Nadu District Municipalities Act, 1920. According to the learned counsel, there is no question of automatic exemption and an order has to be passed in the individual cases taking into account the background facts.

5. None appears on behalf of the first respondent.

6. The first respondent, which is an educational institution submitted application for exemption from payment of property tax. The application was rejected by the appellant by order dated 20 February 2004. The order is available on record. The first respondent without challenging the order dated 20 February 2004, filed a writ petition challenging the consequential assessment order. The learned Single Judge by placing reliance on Section 83(1)(c) of the Tamil Nadu District Municipalities Act and the judgment in **Sriram Educational Trust's** case, allowed the writ petition.

7. The appellant has taken up a contention as to whether a writ petition

of this nature is maintainable without challenging the order declining to grant exemption. There is another contention taken by the appellant that the property is assessed in the name of a different person and it is not in the name of the educational institution. The learned Judge proceeded as if the statute permits automatic exemption and as such, there is no question of levy of property tax by the Municipality.

8. Similar question came up before a Full Bench of this Court in **Kamaraj College of Engineering and Technology, Virudhunagar** (cited supra). The Full Bench interpreted the *in pari materia* provision as contained in Rule 15 of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999. The Full Bench made it very clear that there is no automatic exemption of the buildings owned by the educational institutions from paying the building tax assessed by the local body. The interpretation given by the Full Bench in **Kamaraj College of Engineering and Technology, Virudhunagar** (cited supra) would equally apply to the case on hand, wherein the local body is a Municipality and the exemption is claimed under Section 80(1)(c) of the Act. In view of the order passed by the appellant refusing to grant exemption and the said order attaining finality, the subsequent writ petition challenging the assessment order is clearly not maintainable. This aspect was not considered by the learned Single Judge. We are, therefore, of the view that the impugned order is liable to be set aside.

9. In the result, the order dated 02 April 2009 is set aside. The writ petition is W.P.No.7847 of 2004 is dismissed.

In the upshot, we allow the intra court appeal. No costs. Consequently, connected miscellaneous petition is closed.

(K.K.SASIDHARAN.,J.) **(M.V.MURALIDARAN.,J.)**
27 June 2017

gms

To
The Regional Director
Municipalities
Thanjavur.

K.K.SASIDHARAN,J.
&
M.V. MURALIDARAN.J

gms

W.A.No.14 of 2013

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