IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.11288 of 2006
and
M.P. No. 1 of 2006

Arulmighu Ramasamy Tirukkoil
Tiruindalur, Mayiladuthurai
Thanjavur District
Rep by its Executive Officer ... Petitioner

Vs.

1.The State of Tamil Nadu
Rep by its Secretary to Government
Revenue Department
Fort St. George, Chennai - 600 009.

2.The Special Commissioner cum Commissioner
Urban Land Ceiling & Urban Land Tax
Ezhilagam, Chepauk
Chennai - 600 005.

3.Assistant Commissioner (Urban Land Tax)
Thanjavur.

4.Special Tahsildar (ULT)
Mayiladuthurai
Thanjavur District. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in G.O.Ms.No.571 Revenue [ULC 3(2)] dated 13.10.2005. Quash the same and consequently, direct the first respondent herein to grant exemption to the petitioner -temple from payment of Urban Land Tax in respect of an extent of 26088 sq ft of land in S.No.1396, Thiruindalur Village, Mayiladuthurai Taluk, Thanjavur District.

For Petitioner .. Mr.A.S.Vijayaragavan

For Respondents.. Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.A.S.Vijayaragavan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Government Advocate for the respondents. With consent of the learned counsel for both sides, the writ petition itself is taken up for final disposal.

2.The petitioner is a temple namely, Arulmighu Ramasamy Tirukkoil, Tiruindalur, Mayiladuthurai Taluk, Thanjavur District. It appears that the petitioner temple consists of four temples and the income of the four temples is below 50,000/-. Therefore, they have been classified as Grade III Temple under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The four temples jointly owned an extent of land measuring about 26088 sq ft in the said village, in which, there is a building and a small coconut grove and the balance land has been leased out to 9 persons about 36 years back, who are in occupation and all of them put together are paying Rs.3645/- as ground rent. The income of the temple is from the building and the small coconut grove which is very paltry and insufficient to even perform one ritual per day per temple.

3.While so, the respondent authorities proposed to levy Urban Land Tax after provisions of the Tamil Nadu Urban Land Tax Act, 1966 was extended to cover Mayiladuthurai Urban Agglomeration with effect from fasli year 1401 [1999-1992]. The then Executive Officer failed to file a return as required under Section 7(D) of the Tamil Nadu Urban Land Tax Act, 1966. The fourth respondent treated an extent of 26,088 sq. ft. after deducting 4,800 sq. ft. as urban land in the hands of the petitioner and the fourth respondent assessed the petitioner to Urban Land Tax by order dated 13.05.1994 and directed the petitioner to pay Rs.1174/- per fasli with effect from Fasli year 1401. This order was passed in spite of the request made by the Executive Officer stating that the petitioner should be exempted from payment of Urban Land Tax as it is a place of worship /temple.

4.Immediately, thereafter, the petitioner filed a suit in O.S.No.359 of 2001 on the file of the District Munsif Court, Mayiladuthurai to

> "declare that the petitioner temple is exempted from the provisions of the Urban Land Tax."

Pending suit the petitioner obtained an order of interim injunction in I.A.No.424 of 2001 in O.S.No.359 of 2001, dated 10.09.2001. The suit was ultimately decreed by a judgment and decree dated 04.01.2002. The said decree is to the effect that the petitioner is exempted from the provisions of the Tamil Nadu Urban Land Tax Act. As on date, the decree has become final and the respondents have not taken any steps to file appeal against the said decree.

5.It is contended by the learned Additional Government Pleader that the suit itself is not maintainable. However, this Court in writ proceedings cannot set aside the decree passed by the Civil Court. If the department was of the view that the suit is not maintainable, the authorities ought to have contested the matter before the Civil Court or before the Lower Appellate Court, but not before this Court in a writ proceedings filed by the petitioner.

6.Thus, the decree, which is binding on the respondents, is sufficient to hold that the petitioner is exempt from the provisions of the Tamil Nadu Urban Land Tax Act. That apart, one serious error has been committed by the respondents while passing the impugned order by referring to Section 12(A)(a) of the Income Tax Act, 1961. On facts, the said provision is inapplicable for the simple reason that the income of the temple is barely sufficient to maintain the day-to-day needs of the temple. That apart, the income of the temple should have been ascertained from the audited accounts, which was done by the internal auditor of the HR & CE department. There is absolutely no necessity to touch upon the provisions of the Income Tax Act. The petitioner's claim for exemption came to be rejected by the impugned order by referring to the above said provision of the Income Tax Act, which, I have already held, should not have been the basis for passing the impugned order. On the other hand, the respondents should have taken into consideration the financial position of the petitioner temple as audited by the HR & CE department. This has not been done.

7.Thus, while considering the claim for exemption under Section 27 (1) of the Tamil Nadu Urban Land Tax Act, 1966, the respondents are bound to consider whether undue hardship would be caused to the owner of the property. Undoubtedly, if the petitioner is compelled to pay Urban Land Tax, when the income is very meagre and they have been classified as Grade III Temple under the provisions of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959, it would definitely cause undue hardship, that they would not be able to pay the salary of the temple employees, who are paid from and out of the income of the temple, for which purpose 40% of the income would be earmarked. This would be wholly insufficient to maintain the temple and to pay the salaries of the employees and take care of other religious duties. Therefore, I have no hesitation to hold that the impugned order has been passed by taking note of irrelevant consideration and therefore the writ petition deserves to be allowed.

8.Under the normal circumstances, the matter would be remanded back to the authorities. However, in the instant case, I do not propose to do so. The petitioner is the temple under the control of the Hindu Religious and Charitable Endowments department. The fact that they are classified as Grade III temple has not been disputed and the petitioner has obtained a decree from the Civil Court, which has attained finality. Therefore, the writ petition is allowed and the impugned order is quashed and it is held that the petitioner is entitled for the exemption from payment of Urban Land Tax for the land in question. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

maya

To

1.The Secretary to Government
Revenue Department
Fort St. George, Chennai - 600 009.

2.The Special Commissioner cum Commissioner
Urban Land Ceiling & Urban Land Tax
Ezhilagam, Chepauk
Chennai - 600 005.

3.Assistant Commissioner (Urban Land Tax)
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4.Special Tahsildar (ULT)
Mayiladuthurai
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+1cc to the Spl. Government Pleader, S.R.No. 80031

W.P. No.11288 of 2006

TR(06/12/2017)