

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14529 of 2009 & M.P.No.1 of 2009

The Institute of Franciscan Missionaries
of Mary, rep. by its Secretary,
Sr.Annamma Philipose,
The Immaculate Conception Convent,
Door No.1252, Big Bazaar Street,
Coimbatore-641 001. Petitioner

Vs.

- 1.The Commissioner,
Coimbatore City Municipal Corporation,
City Municipal Corporation Buildings,
Coimbatore-641 001.
- 2.The Assistant Commissioner,
Coimbatore City Municipal Corporation,
South Zone, City Municipal Corporation
Buildings, Coimbatore-641 001. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the entire records from the second respondent herein pertaining to his notice under assessment No.240020 dated 08.07.2009, in respect of the Immaculate Conception Convent hospital and quash the same and direct the respondents to pass an order to the effect that the Immaculate Conception Convent hospital administered by the petitioner is entitled to extension of the statutory exemption from levy of property tax under Section 123 (e) of the Tamil Nadu Act 25 of 1981 as enjoyed by it under Section 83(1) (e) of Act 5 of 1920.

For Petitioner : Sr.M.B.Dominique

For Respondents : Mr.R.Sivakumar,
Standing Counsel

O R D E R

Heard Sr.M.B.Dominique, learned counsel appearing for the petitioner and Mr.R.Sivakumar, learned Standing Counsel appearing for the respondents.

2.The petitioner is a Society registered under the Societies Registration Act and also enjoys exemption under Section 12 A of the Income Tax Act. It is a charitable trust doing services of education, health care and socio-economic welfare services. In keeping with the objects of the society, the petitioner established a hospital in the year 1879 in door No.19, Ismail Rowther Street, Coimbatore to cater to the people belonging to the lower-strata of society. Free medical treatment and care was provided to all, irrespective of caste and creed. The hospital became very popular on account of the good medical care given, as a result of which facilities were improved to provide their better treatment to all, who come to the hospital especially, women and children. The District Collector, Coimbatore on inspecting the hospital and perusing the records has issued a certificate dated 12.01.1983, to the effect that the petitioner's hospital is a 'Charitable Institution'. Once again an inspection was conducted and the District Collector, Coimbatore issued a certificate dated 17.07.1986, permanently certifying the hospital as a Charitable Institution. Based on these certification, the petitioner enjoyed exemption from payment of property tax in terms of Section 83(1)(a) of the Tamil Nadu District Municipalities Act, 1920.

3.After the Coimbatore city became a Corporation, the Tamil Nadu Act 25 of 1981 was enacted and the petitioner's hospital was assessed to property tax and they were compelled to pay property tax at the rate of Rs.8,924/- per half year. In spite of the petitioner stating that they enjoyed exemption under the Tamil Nadu District Municipalities Act, they are unable to pay property tax, their request was not considered and a communication was sent on 12.11.1981, stating that though the petitioner had the benefit of exemption under the 1920 Act, there is no pari materia provision under Act 25 of the 1981, for grant of exemption. Therefore, the petitioner was advised to pay the property tax. Subsequently, the petitioner contested the proceedings and ultimately, the matter was taken up before the Taxation Appellate Tribunal, Coimbatore Corporation, presided over by a Judicial Officer in the cadre of Subordinate Judge in T.A.T.No.431 of 1993.

4.The Tribunal by order dated 25.04.1995, took note of

the submission made by the petitioner and directed the petitioner to submit a petition claiming exemption from levy of property tax along with necessary records. This direction was complied with by the petitioner by filing a petition on 08.05.1995, followed by a letter through the petitioner's counsel dated 20.12.1995. However, the plea of exemption was not considered and the petitioner was served with a final notice dated 08.07.2009, demanding property tax for the period from 1988-89 to 2009-10. This demand has been challenged in this writ petition.

5.As could be seen from the records placed before this Court, the subject building was exempted from payment of property tax under the provisions of the Tamil Nadu District Municipalities Act. Though, it is stated that there is no record to the said effect, the respondent-Corporation cannot deny the same since the Commissioner of the respondent-Corporation in their letter dated 13.11.1981, has in no uncertain terms stated that the petitioner was enjoying the benefit of exemption under the provisions of the Tamil Nadu District Municipalities Act. Therefore, if the area in which the petitioner's building is situated has now been re-classified to fall within the area of Corporation, then whatever benefits enjoyed by the petitioner under the provisions of the Tamil Nadu District Municipalities Act, should automatically enure in favour of the petitioner. This alone would be the correct interpretation or otherwise for no fault committed by the petitioner, they would be penalized, merely on account of the fact that the Government took a decision to re-classify the Coimbatore city as a Corporation. Thus, the benefit of exemption, which was granted to the petitioner under the District Municipalities Act, should be continued under the provisions of the Coimbatore City Municipal Corporation Act.

6.In any event, the petitioner had complied with the direction issued by the Taxation Appellate Tribunal and filed a petition for exemption. Though the respondent-Corporation was a party to the order passed by the Tribunal, they did nothing on the application for exemption and after about 14 years, the impugned demand has been passed. If only the Tribunal had the power to punish the respondent, it is a fit case where stringent punishment should be given. Unfortunately, such power had not been conferred on the Tribunal.

7.The issue as to how the claim for exemption has to be considered was dealt with by this Court in the case of Sundaram Medical Foundation, vs. The Commissioner Corporation of Chennai & others reported in CDJ 2017 MHC 5265. In the said case also, it was a hospital, claimed to be doing charitable activity and the land on which the hospital has been constructed was given by

the Government at a concessional rate. At this juncture, it would be relevant to take note of certain earlier judgments, which were referred to in the case of Sundaram Medical Foundation (supra):

"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 Sri Ramakrishna 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.

.....

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."

8. In the case of Coimbatore Masonic Charity Trust, vs. The Corporation of Coimbatore, in W.P.No.1422 of 2003 dated 14.07.2010, this Court considered the plea of exemption made by the said Trust, which was rejected and taking note of the earlier decisions on the issue, allowed the writ petition with certain directions. The operative portion of the order reads as follows:

"8. In the instant case, apart from arriving at decision based on records, the respondent is also required to conduct the inspection of the premises, since what claim is exemption from levy of property tax on building. Therefore, unlike in orders of exemption granted under the Income Tax Act or the Sales Tax Act, the respondent cannot proceed only based upon the documents available on record. In my view, the exemption granted under the Income Tax Act cannot be brushed aside by the respondent, while considering the claim for exemption for property tax. As long as the exemption granted under 80 G of the Income Tax Act exempting the Income Tax on the donations received by the petitioner's trust remains valid it is substantial piece of evidence to prove about the activities of the petitioner trust. In the provision of the Income Tax Act, detailed procedure has been contemplated prior to the grant of such exemption. Therefore, the respondent Corporation is bound to take note of exemption granted by the Income Tax Department. It is seen that though initially, order of interim stay was granted by this Court, by subsequent order dated 10.09.2003, the interim stay has been vacated and the learned counsel for the petitioner submits that already the petitioner has paid a sum of Rs.6,00,000/- towards the property tax.

The learned counsel for the petitioner placed reliance on the decision of the Honourable Division Bench of this Court in S.N.R.Sons Chairtable Trust Vs. The Commissioner, Coimbatore City Municipal Corporation, 1993 (2) Law Weekly 100. The Honourable Division Bench considered the effect of the payment made by the patients to the hospital, whether it could be equated to rent and held as follows:

" In this 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 in which it is intended under the provisions referred to earlier."

9. On perusal of the entire material available on record and after going through the counter affidavit and the reply affidavit, in my view, this is a fit case, where the entire issue has to be reconsidered by the respondent and the petitioner is also bound to produce all documents in support of their claim as well as such those documents called for by the respondent. Further, if such records are not available to the petitioner or if they claim privilege to such documents, it is always open to them to take such a stand, but the essential documents to prove their charitable activity is required to be produced. Further, the respondent is also required to conduct an inspection of the premises to satisfy themselves as regards of nature of activity carried on in the premises.

10. In the result, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is granted liberty to file a comprehensive fresh representation including documents in support of their claim for exemption within a period of three weeks from the date of receipt of a copy of this order. On receipt of such representation, the respondent corporation shall fix a date for inspection of the premises and after inspection, afford an

opportunity of personal hearing to the petitioner and then decide the matter on merits and in accordance with law within a period of six weeks from the date of which the personal hearing is afforded to the petitioner. The respondent while deciding the matter will also take note of the law laid down by this Court in the Judgment reported in 1993 (2) Law Weekly 100, referred supra."

9. Apart from the above legal position, on facts, the petitioner's case stand in a better footing on account of the exemption under the provisions of the District Municipalities Act.

10. As pointed out earlier, if that was the factual position as affirmed by the Commissioner of the Coimbatore Corporation vide letter dated 30.11.1981, the petitioner cannot be put to disadvantageous position and the question of compelling them to pay the property tax does not arise.

11. Thus, for the above reasons, this writ petition is allowed, the impugned demand is quashed and the respondents are directed to consider the petitioner's claim for exemption vide petition dated 08.05.1995, along with the annexures and the petitioner is at liberty to submit a fresh petition enclosing the copies of earlier petition on the claim for exemption within a period of thirty days from the date on which the petition submitted by the petitioner. It is needless to state that while quashing the impugned demand of property tax for the past period, there should be no coercive action against the petitioner till the matter is decided in terms of the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
सत्यमेव जयते Assistant Registrar

//True copy//

WEB COPY

Sub Assistant Registrar

abr

To

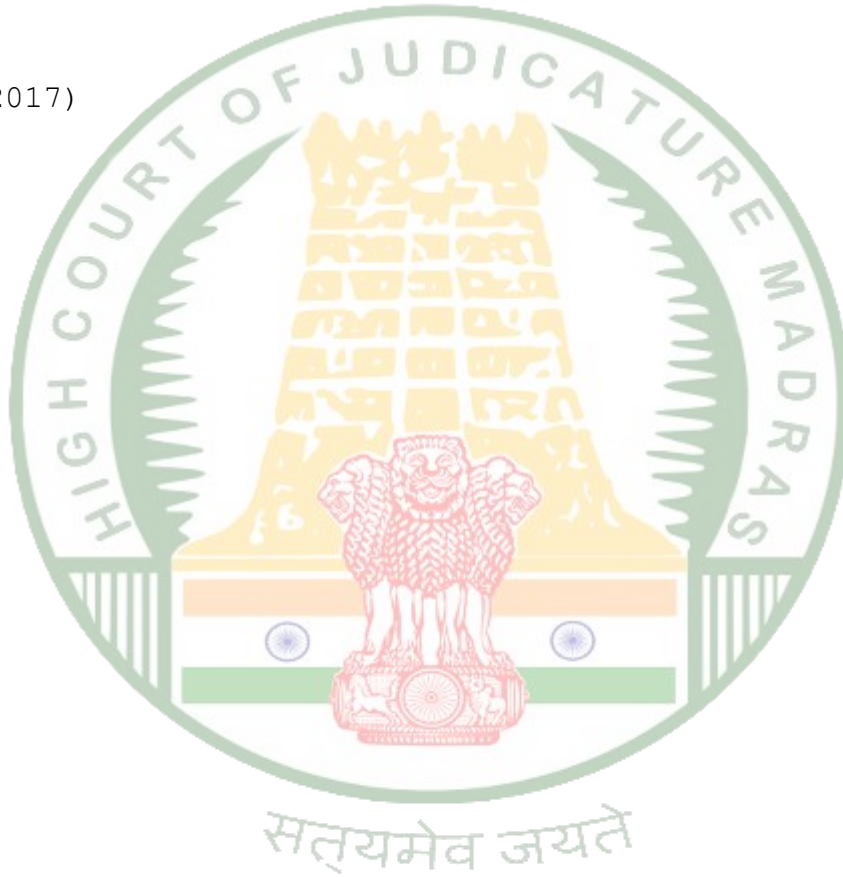
1. The Commissioner,
Coimbatore City Municipal Corporation,
City Municipal Corporation Buildings,
Coimbatore-641 001.

2.The Assistant Commissioner,
Coimbatore City Municipal Corporation,
South Zone, City Municipal Corporation
Buildings, Coimbatore-641 001.

+1cc to Mr.R.Sivakumar, Advocate SR.No.87532
+3cc to Mr.M.B.Dominique, Advocate SR.No.87098
+1cc to Special Government Pleader SR.No.87595

W.P.No.14529 of 2009

GMR (CO)
GN (22/12/2017)



WEB COPY