IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.36802 of 2004

Dr.Mancy Alexander ... Petitioner

Vs.

The Commissioner,
Tambaram Municipality,
Tambaram, Chennai 600 045. ... Respondent

Prayer:
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in Na.K.No.597/02/H2 dated 20.10.2004 issued by the respondent and quash the same and consequently direct the respondent to reconsider the petitioner's representation dated 03.01.2004.

For Petitioner : Ms.Usha Ramman

For Respondent : Mr.M.Liagat Ali

O R D E R

Writ petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the order in Na.K.No.597/02/H2 dated 20.10.2004 issued by the respondent and to quash the same and consequentially direct the respondent to reconsider the petitioner's representation dated 03.01.2004.

2. The brief facts of the petitioner's case is that the petitioner is the Chairman of Dr.Alexander Educational Foundation registered under the Societies Registration Act, 1860. The petitioner/Foundation is running and managing M/s.Philips Hospital whose building is comprised of five floors including the ground floor and the said hospital working as a Trust is exempted from the property tax. However, the respondent/Municipality, without considering the petitioner's request have passed an order on 20.10.2004 directing the petitioner to pay the arrears of property tax and demanding a sum of Rs.1,71,101/-. In an earlier occasion, after payment,

the respondent/Municipality issued a demand notice against one Allikutti. However, one Alexander, husband of the petitioner, had already filed a writ petition in W.P.597/2002. On 04.09.2003, this court has dismissed the writ petition. Aggrieved by the same, the petitioner's husband filed a Writ Appeal in W.A.No.3589 of 2003, wherein this court, by an order dated 11.11.2003 has set aside the demand order dated 10.01.2002 and directed the respondent to receive the explanation filed by the petitioner's husband. Thereafter to conduct an enquiry by giving opportunity of hearing and then to pass orders afresh. Accordingly, the order, which is impugned in this writ petition came to be passed by the respondent.

3. Learned counsel for the petitioner would submit that the petitioner is running educational institutions, Hospital and Church and all those are running in the five floors of the building. However, the petitioner is not able to produce any Rules to exempt her from payment of property tax. However, the learned counsel for the petitioner admitted/objected but they are enjoying the facilities provided by the Municipality and she prayed to allow the writ petition.

4. Learned counsel for the respondent/Municipality submitted that the petitioner though enjoying all the basic facilities including road, water connection and drainage connection, etc., non-payment of the property tax by the petitioner is unsustainable. This Court, considering the issue elaborately has held that the petitioner running educational institutions and hospital and thereby earning money from the general public, necessarily have to pay the property tax and he has relied upon the decision of this Court in the case of The Municipal Corporation of Coimbatore by its Commissioner Vs.Govindasamy Naidu Hospital, reported in 2004 (2) CTC 155 and the relevant paragraph No.26 is extracted as follows:

> "26. For the foregoing reasons, we are of the opinion that the plaintiff/respondent cannot be construed as a charitable hospital within the meaning of Section 86(e) of the District Municipalities Act, 1920 and Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981. Therefore, the Judgment and the decree of the appellate Court confirming the Judgment and decree of the trial court is set aside and the suit is dismissed."

5. He further contended that originally the demand notice was issued against one Allikutti and the petitioner's husband filed a writ petition in his individual capacity. As against the dismissal of the writ petition, the husband of the petitioner preferred writ appeal in his individual capacity. Thereafter,

the hospital and other properties stand in the name of the individual capacity of the Charitable Trust and they proceeded the matter individually in the name of the Charitable Trust and the petitioner has nowhere appeared before the authority and in order to avail/grab the benefit from the Municipality, For the first time, they introduced after the Writ Appeal order, the hospital is running for charitable purpose. However, there is no document produced before the authority to prove the same.

6. In view of the above and on perusal of the impugned order and taking note of the fact that no document produced before the authority to prove that the property is owned by the Trust or running by the Trust, this Court do not find any error or infirmity or irregularity in the demand notice issued by the Corporation and the same is liable to be set aside.

In the result, the writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

GV

To

The Commissioner,
Tambaram Municipality,
Tambaram, Chennai 600 045.

+1cc to Mr.M.Liagat Ali, Advocate, S.R.No.68465

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