BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DELIVERED ON : 21.11.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P(MD)No.3668 of 2011
and
M.P(MD)No.1 of 2011

Chamber of Commerce Educational and
Charitable Society,
Reg.No.45/1983,
No.56, M.K.Moopanan road,
Thanjavur - 613 001.
represented by its
President,
T.Vellaisamy Nadar ... Petitioner

Vs.

1.The State of Tamil Nadu,
represented by The Secretary to Government,
Department of Rural Development,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The District Collector,
Thanjavur, Thanjavur District.

3.The Block Development Officer,
(Village Panchayat),
Thanjavur Panchayat Union,
Thanjavur.

4.The President,
Thottakaadu Panchayat,
Thottakaadu,
Ramapuram Post,
Thanjavur - 3.
Thanjavur District.

5.The President,
Manakarampai Panchayat,
Manakarampai,
Ammanpettai Post,
Thanjavur District. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus forbearing the respondents from collecting property tax for the buildings of the Educational Institutions of the petitioner's Society contrary to Rule 15(c) of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes), Rules, 1999.

For Petitioner : Mr.C.Dhanaseelan

For Respondents : Mr.T.S.Mohamed Mohideen
Additional Government Pleader
for R.1 & R.2
Mr.T.R.Janarthanan
Additional Government Pleader for R.3
No appearance for R.4 & R.5

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ORDER

This writ petition has been filed seeking a writ of Mandamus forbearing the respondents from collecting property tax for the buildings of the Educational Institutions of the petitioner's Society contrary to Rule 15(c) of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes), Rules, 1999.

2. The case of the petitioner, succinctly narrated, is as follows:

2.1. The petitioner is a society registered under the Tamil Nadu Societies Registration Act under Reg.No.45/1983. The said society is running the following educational institutions:

(i) Manali Ramakrishna Polytechnic College, Guruvadi, Ramapuram Post, Thanjavur District;

(ii) Nalli Kuppusamy Arts College, Thittai Road, Manakarampai, Ramapuram Post, Thanjavur District; and

(iii) Dr.Vellaisamy Nadar College of Education, Thittai Road, Manakarampai, Ramapuram Post, Thanjavur District.

2.2. The grievance of the petitioner is that the respondents 2 to 5 are demanding property tax in respect of the buildings of the above educational institutions.

2.3. The main object of the petitioner - society is to run the educational institutions on 'No Loss No Gain' basis and the fees collected by them are in accordance with the fees prescribed by the educational authorities from time to time.

2.4. The petitioner - society is running the educational institutions in Village Panchayat areas and they are imparting education to the students hailing from rural areas.

2.5. The petitioner - society is entitled to claim exemption with regard to the buildings used for educational purposes in accordance with Rule 15(c) of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999.

2.6. However, the respondents 4 and 5 demanded the property tax from the petitioner - society in the following manner:

Sl. No.	Name of the Institution	Property Tax (Rs.)	Library Cess (Rs.)	Total
1.	Manali Ramakrishna Polytechnic College, Guruvadi	39,540.00	3,954.00	43,494.00
2.	Nalli Kuppusamy Arts College, Manakarampai.	6,150.00	615.00	6,765.00
3.	Dr.Vellaichamy Nadar College of Education, Manakarampai.	6,150.00	615.00	6,765.00

2.7. Aggrieved thereby, the present writ petition is filed.

3. Mr.C.Dhanaseelan, learned Counsel for the petitioner made the following submissions:

3.1. The petitioner is a registered society under the Tamil Nadu Societies Registration Act and is running the aforesaid educational institutions purely for charitable purposes.

3.2. The petitioner - society is helping the students hailing from rural background by providing quality education within their affordable reach.

3.3. A meagre sum is collected from them only to meet out the salary for the staff as fixed by the Fee Determination Committee.

3.4. The education is being provided as a charity without any intention to earn profits. Neither any capitation fee nor any donation or other fees is collected by the petitioner school.

3.5. The lands and school buildings are exclusively used for the purposes of the school, namely, imparting education to the students of the rural areas and not for any other commercial or related purposes. Neither any rent nor any other profit is derived either from the said lands or buildings.

3.6. The act of respondents in levying property tax to the petitioner school is illegal and without any basis and thus, it would exhibit non-application of mind on the part of the respondents.

3.7. The demand of property tax was made without any valid resolution passed by the Village Panchayat.

3.8. Since the education by itself is 'charitable and philanthropic', the buildings used for 'educational purposes' are obviously for charitable and philanthropic purposes.

3.9. The educational institutions in the State are prohibited from making any profit and the collection of any 'capitation fee' for giving admission to the students and the levy of 'excess fee' for providing education to them are not only forbidden but also would attract to penal action.

3.10. The act of the respondents 4 and 5 in issuing demand notice for collection of property tax from the educational institutions would be without any jurisdiction.

3.11. Thus, the learned Counsel for the petitioner prayed for allowing this writ petition.

4. Per contra, Mr.T.S.Mohamed Mohideen, learned Additional Government Pleader appearing for the respondents 1 and 2, among other things, contended that the relief sought for by the petitioner in this writ petition is liable to be rejected in view of the judgment of the Honourable Full Bench of this Court in ***The President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District v. Kamaraj College of Engineering and Technology*** reported in ***2009 (5) CTC 289***, and thus, prayed for the dismissal of this writ petition.

5. Whereas Mr.T.R.Janarthanan, learned Additional Government Pleader appearing for the third respondent, reiterating the averments in the counter affidavit filed by the third respondent, contended that the exemption claimed by the petitioner could not be granted in view of the amendment made to Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 and thus, prayed for the dismissal of this writ petition.

6. I have considered the submissions made by the learned Counsel for the parties and perused the materials available on record.

7. The Honourable Full Bench of this Court in ***The President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District v. Kamaraj College of Engineering and Technology*** reported in ***2009 (5) CTC 289***, while considering the plea of the respondent - College therein as to the grant of exemption from levy of house tax as per Rule 15 of the Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999, held as follows:

> "17. We have already noticed that Rule 15 is a subordinate legislation which cannot override the substantive provisions of the Act such as Sections 171 (1), 172 and 176. Section 171(1) mandates the Village Panchayat to levy house tax on all the houses of the Village Panchayat. The mandate is also clear from Section 172, wherein the basis of levy of house tax has been prescribed. There is a prohibition from grant of exemption of surcharge or tax under Section 176 except in accordance with the rules. Therefore, if Rule 15 is read with the aforesaid Sections 171, 172 and 176, it is to be held that under Rule 15 it is not mandatory to grant exemption from the house tax, but is an enabling provision allowing the Village Panchayat to grant exemption to a class of buildings as specified therein, if it so chooses. Rule 15 cannot be held to be mandatory to exempt a class of buildings from payment of house tax, which otherwise will run counter to Sections 171, 172 and 176 of the Act and may render Rule 15 *ultra vires*. Therefore, the word "shall" used

in Rule 15 has to be read as "may" to give effect to the said rule of exemption.

18. We, accordingly, hold that the exemption prescribed under Rule 15 is not mandatory and is an enabling provision empowering the Village Panchayat or Panchayat Union to grant exemption to a class of buildings as specified therein. The corollary is that it is open for the Village Panchayat or Panchayat Union not to grant such exemption in favour of one or other class of such buildings. The Court cannot force the Panchayat to exercise its discretionary power to grant exemption to one or other class off buildings in absence of any decision taken by the Village Panchayat or Panchayat Union to grant such exemption. Once a Village Panchayat or Panchayat Union takes a decision to grant exemption in favour of one or other class of buildings, only in that case no discrimination can be made between two similarly situated persons and no order can be passed in an arbitrary manner.

Learned Single Judge, in the present case, and the Division Bench in ***Sriram Educational Trust*** (supra) having failed to notice the aforesaid aspect, we hold that the Division Bench in ***Sriram Educational Trust*** (supra) has not laid the correct law.

19. In view of our finding in the present case and as we find that the appellant has not decided to grant exemption to any of the educational institutions or other buildings under Rule 15, the respondent college having knowledge of the same and having paid the house tax since 2001-02, we hold that the respondent-College was not entitled for grant of exemption nor it is entitled for refund of the house tax already paid."

8. In the light of the dictum laid down by the Honourable Full Bench of this Court, this Court finds that the prayer sought for by the petitioner cannot be granted and thus, the writ petition fails.

9. Therefore, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Rural Development,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The District Collector,
  Thanjavur,
  Thanjavur District.

3.The Block Development Officer,
  (Village Panchayat),
  Thanjavur Panchayat Union,
  Thanjavur.

+1cc to Mr.C.DHANASEELAN Advocate in SR. No. 88436
RSB
JS/GT/SAR.4/30.11.2017/6P-5C

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