BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.09.2017

CORAM:
THE HONOURABLE MR.JUSTICE R.MAHADEVAN
W.P(MD)No.821 of 2011
and M.P.(MD) Nos.212 of 2011

St.Justin's Girls' Hr.Sec.School,
Rep. by its Correspondent,
Rev.Sr.Isabella Mary,
Palakurichy-621 308,
Trichy District. ... Petitioner

-vs-

1. The Government of Tamil Nadu,
   Rep. by its Secretary,
   Rural Development and Panchayat Raj Department,
   Fort St.George, Chennai-09.

2. The District Collector,
   Trichy District,
   Trichy.

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

4. The President / Executive Authority,
   Palakurichy Panchayat,
   Palakurichy-621 308,
   Trichy District. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Demand Notice dated 27.12.2010 for the payment of Rs.30,844/- as house tax for Door Nos.328, 329, 330, 331 and 332 in Ward No.III in Form I vide Assessment Nos.716, 717, 718, 719 and 720 respectively on the file of the 4th respondent and quash the same directing the respondents to grant statutory exemption from the payment of house tax in respect of the petitioner Aided school in accordance with law.

For Petitioner : Mr.FR.A.Xavier Arulraj
For R1 & R2 : Mr.S.Kumar,
Addl. Govt. Pleader
For R3 & R4 : Mr.K.M.Vijayakumar

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ORDER

This writ petition has been filed, seeking to quash the demand notice of the 4th respondent dated 27.12.2010, by which the petitioner-school (in short "the school") was directed to pay a sum of Rs.30,844/- as House Tax. The petitioner also sought a direction to the concerned respondent to grant statutory exemption from the payment of house tax in respect of the school in accordance with law.

2. It is the case of the School that it is an Aided school and also is a religious Congregation of Catholic Sisters, dedicated for the development of the children in the locality. The school is situated in a total extent of 8.38 acres of land and the same was exempted from house-tax under Rule 15(c) of the Tamil Nadu Panchayats (Assessment and Collection of Taxes) Rules, 1999 (hereinafter referred to as "the Rules"). While so, the 1st respondent, by notification dated 05.03.2008 amended the Rule 15 (c) of the Rules, pursuant to which, the 4th respondent had issued a demand notice dated 27.12.2010 for payment of Rs.30,844/- as House Tax for the buildings situated in the school. It is the case of the school that the 4th respondent, after deducting the amount of Rs.2,035- paid by the school, has subsequently demanded Rs.28,809/- by way of fresh notice of demand. It is the further case of the school that it is a non-profit institution in the field of education and the denial of grant of exemption of House Tax would certainly jeopardize the interest of the school and create financial crisis. Hence, the petitioner is before this Court with the above prayer.

3. The learned counsel for the petitioner would submit that the school was mechanically forced to pay the House Tax based on the amendment, which was brought in force. The deprivation of exemption would amount to denial of free and compulsory education for the children, falling under poor and the downtrodden category. Hence, the amendment and the consequential demand notice are highly arbitrary, illegal and a colourable exercise of power and therefore, the impugned order of demand is liable to be set aside at the threshold.

4. On the other hand, the respondents have contended that the issue involved in this case is no longer *res integra*, as a Full Bench of this Court has already considered the issue in entirety in the case of *The President, K.Vellakulam Panchayat vs. Kamaraj College of Engineering and Technology, Virudhunagar*, reported in *2009 (5) CTC 289*, wherein the Full Bench of this Court had declined to interfere in the process of levy of House Tax and rejected the plea of institutions, like that of the school. Therefore, it is the contention of the respondents that there is no interference warranted by this Court in this writ petition and the same has to be dismissed *in limine*.

5. The short point for consideration in this writ petition is whether the demand made by the 4th respondent is valid in the eye of law. The answer is in affirmative, because the Legislature of the State has been authorised to frame law authorizing a Panchayat to levy, collect appropriate taxes, duties, tolls and fees as enunciated under the relevant provisions of the Act and the Court cannot force the Panchayat to exercise its discretionary power to grant exemption to one or other class of buildings in absence of any decision taken by the Village Panchayat or Panchayat Union to grant such exemption. Such fact is emphasized in the judgment of the Full Bench of this Court and there is no quarrel in it.

6. However, in the present case on hand, though the school had paid some amount for the financial year 2010 - 2011, the 4th respondent has initially demanded the entire amount and after realizing the mistake, in a hasty manner, a fresh demand notice, after deducting the amount already remitted by the school, was issued, which itself shows the non application of mind on the part of the 4th respondent. It is also not mentioned whether opportunity of hearing was given to the school or not. Even in Paragraph No.10 of the Full Bench's judgment of this Court itself (cited supra), it has been laid that though the Panchayat is empowered to levy tax, it should be in accordance with the procedure and subject to limits as prescribed under the Tamil Nadu Panchayats Act, 1994. According to the petitioner, the 4th respondent has levied House Tax even for the portions already assessed, statutorily exempted etc., without application of mind.

7. Therefore, following the judgment of the Full Bench judgment of this Court (cited supra), while declining to interfere with the impugned demand notice, this writ petition is disposed of, directing the 4th respondent to re-do the entire exercise in respect of levy of House Tax insofar as the petitioner-school is concerned and issue a fresh demand notice, if need be, after affording an opportunity of hearing to the petitioner school. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar (AE)

/True copy/

Sub Assistant Registrar

To:

1. The Secretary,
   Government of Tamil Nadu,
   Rural Development and Panchayat Raj Department,
   Fort St.George, Chennai-09.

2. The District Collector,
   Trichy District,
   Trichy.

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

4.The President/Executive Authority,
Palakurichy Panchayat,
Palakurichy, Trichy-621 308.

+1cc to M/S.Special Government Pleader,SR.80346

W.P(MD)No.821 of 2011
20.09.2017

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KK/MR KKR/SAR 1/09.11.2017/ 4P- 6C/