BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.(MD)Nos.7555, 11267, 16307 of 2013 & 644 of 2015
and
M.P.(MD).Nos.1,1, 2 of 2013 & 1 of 2015

V.S.B.Engineering College,
Rep. by its Secretary,
Karudayampalayam,
Karur 639 111,
Karur. ... Petitioner in all writ petitions

Vs.

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

2. The District Collector,
   Karur District.

3. The President,
   Karudayampalayam Panchayat,
   K.Paramathi Via,
   Aravakurichi Circle,
   Karur District - 639 111. ... Respondents in all Writ Petitions

PRAYER in W.P.(MD).No.7555 of 2013: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned demand notice 08.04.2013 of the third respondent in respect of the petitioner Institution's Tax Assessment No.573 for its building situated at Karudayampalayam, Karur-639 111, Karur District, and quash the same.

PRAYER in W.P.(MD).No.11267 of 2013: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the demand notice dated 06.06.2013 of the third respondent and quash the same.

PRAYER in W.P.(MD).No.16307 of 2013: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the demand notice of the third respondent dated Nil, served on the petitioner on 27.08.2013 under Assessment No.573 and quash the same.

PRAYER in W.P.(MD).No.644 of 2015: Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the proceedings of the third respondent herein, viz. the demand dated 29.12.2014 in respect of the Petitioner Institution's Tax Assessment No.573 for its building situate at Karudayampalayam, Karur 639 111, Karur District.

For Petitioners : Mr.ARL Sundaresan
Senior Counsel
For AL.Ganthimathi

For R1 & R2 : Mr.J.Gunaseelan Muthiah
Government Advocate

For R3 in W.P.(MD).No.7555 of 2013 : Mr.A.K.Baskarapandian

For R3 in W.P.(MD).No.16307 of 2013 : Mr.R.Velmurugan

For R3 in W.P.(MD).Nos.11267 of 2013
and 644 of 2015 : Mr.V.Muruganathan

COMMON ORDER

These Writ Petitions have been filed seeking to quash the demand notices, issued by the third respondent.

2. Since the issue involved in all these writ petitions is one and the same, these writ petitions are taken up together for hearing and are being disposed of by this common order.

3. The present writ petitions have been filed against various demand notices issued in respect of different amounts towards property tax. Facts-in-nutshell, are as follows:

i) It is the case of the petitioner-College that it is an Educational Institution approved by AICTE and affiliated to Anna University. The petitioner-College claimed that they have dedicated themselves for the development of Student community. The petitioner-College 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"). However, pursuant to the amendment, the College was directed to pay the tax as per the demand of the Panchayat;

ii) While so, the petitioner-College had filed a writ petition in WP(MD) No.11681 of 2005, challenging the demand of property tax at the rate of Re.1/- per square feet for the building and the same was dismissed, in which, the Panchayat had agreed to collect the tax at the rate of Re.0.75 paise per square feet, which includes surcharge and all other charges. Accordingly, the petitioner-College had paid the property tax for the period upto 2012 – 2013;

iii) Subsequently, the third respondent issued a demand notice dated 08.04.2013 for payment of Rs.7,27,422/- (Rupees Seven Lakhs Twenty Seven Thousand Four Hundred and Twenty Two only) towards surcharge in respect of the property. Though the petitioner-College submitted a detailed reply dated 15.04.2013, stating that after disposal of the writ petition in WP (MD) No.11681 of 2015, they paid the entire tax at the rate of Re.0.75 paise per square feet without arrears. However, the third respondent has not considered the reply of the petitioner- College till now, but proceeded to take action against the petitioner- College alleging that there is due in respect of surcharge. Therefore, the petitioner-College filed a writ petition in WP(MD) No.7555 of 2013 before this Court, wherein, this Court granted an interim order;

iv) Later, the third respondent issued yet another demand notice dated 06.06.2013 for payment of Rs.8,68,788/- (Rupees Eight Lakhs Sixty Eight Thousand Seven Hundred and Eighty Eight only) towards property tax, surcharge and library tax in respect of the property. Aggrieved thereby, the petitioner-College filed a writ petition in WP(MD) No.11267 of 2013;

v) Again, the third respondent issued a demand notice dated 27.08.2013 for payment of Rs.6,88,788/- (Rupees Six Lakhs Eighty Eight Thousand Seven Hundred and Eighty Eight only) towards property tax, surcharge and library tax. The petitioner-College filed WP(MD) No.16307 of 2013 before this Court and as per the direction of this Court, the petitioner-College paid a sum of Rs.2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only) towards tax for the year 2013-2014. The third respondent once again issued a demand notice dated 29.12.2014 after conducting a spot inspection and measurement of the property on 22.09.2014 for payment of Rs.6,42,745.40p. (Rupees Six Lakhs Forty Two Thousand Seven Hundred and Forty Five and Forty Paise only). Challenging the same, the petitioner-College filed WP (MD) No.644 of 2015 before this Court.

4. The learned Counsel for the petitioner-College would submit that the petitioner-College was mechanically forced to pay the tax under various heads based on the amendment, which was brought in force. The main object of the petitioner-College is to impart good education to the students having rural background and deprivation of exemption would affect the yeoman services being rendered by the petitioner-College. Hence, the demand notices are highly arbitrary, illegal and a colourable exercise of power and therefore, the impugned orders of demand are liable to be set aside at the threshold.

5. 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 Tax and rejected the plea of institutions, like that of the College. 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.

6. I have considered the rival submissions and perused the materials available on record.

7. The short point for consideration in these writ petitions is whether the demand made by the third 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.

8. However, in the present cases on hand, though the college had paid some amount against various demands, the third respondent has initially demanded the entire amount and after realizing the mistake, in a hasty manner, fresh demand notices, after deducting the amount already remitted by the college, were issued, which itself shows the non- application of mind on the part of the third respondent. It is also not mentioned whether opportunity of hearing

was given to the college or not. Even in Paragraph No.10 of the Full Bench's judgment of this Court itself (cited supra), it has been laid down 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 College, the third respondent has levied Tax even for the portions already assessed, statutorily exempted etc., without application of mind.

9. 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."

10. Therefore, following the judgment of the Full Bench judgment of this Court (cited supra), while declining to interfere with the impugned demand notices, these writ petitions are disposed of, directing the third respondent to re-do the entire exercise in respect of levy of Taxes insofar as the petitioner-College is concerned and issue fresh demand notices, if need be, after affording an opportunity of hearing to the petitioner-college. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

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

2. The District Collector,
   Karur District.

3. The President,
   Karudayampalayam Panchayat,
   K.Paramathi Via,
   Aravakurichi Circle,
   Karur District.

+1cc to Special Government Pleader in SR.No.80859, 80865, 80867 and 80869.

W.P.(MD)Nos.7555, 11267, 16307 of 2013
and 644 of 2015
20.09.2017

rm
SDS/SKN:RSK/SAR 3/09.11.2017/8P/5C