IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2018

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.12048 and 14613 of 2016
and
W.M.P.Nos.10420 and 12788 of 2016

W.P.No.12048 of 2016

M/s.Dhanraj Baid Jain College,
Rep.by Dr.Harish L.Metha,
Secretary Administration,
Jothi Nagar, Thoraipakkam,
Chennai - 600 097. .. Petitioner

Vs.

1. Assistant Revenue Officer,
Zone - 15,
Greater Chennai Corporation,
No.120, Rajiv Gandhi Salai (OMR),
Sholinganallur,
Chennai - 600 003.

2. Commissioner,
Corporation of Chennai,
Park Town, Chennai - 600 003. .. Respondents

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records culminated in proceedings made in ZO-15/R.D.C.No.R1/719/2016 dated 23.02.2016 of the 1st respondent and quash the same and direct the respondents to grant exemption to the petitioner's institution from payment of Property Tax for the petitioners college buildings including hostel used for the purpose of Education.

For Petitioner : Mr.C.Johnson

For Respondents : Mr.T.C.Gopala Krishnan

W.P.No.14613 of 2016

Dr.Harish L.Metha .. Petitioner

Vs.

1. Assistant Revenue Officer,
Zone - 15,
Greater Chennai Corporation,
No.120, Rajiv Gandhi Salai (OMR),
Sholinganallur,
Chennai - 600 003.

2. Commissioner,
Corporation of Chennai,
Park Town, Chennai - 600 003. .. Respondents

Prayer : Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writs of Certiorarified Mandamus, calling for the records culminated in proceedings made in ZO-15/R.D.C.No.R1/720/2016 dated 23.02.2016 of the 1st respondent and quash the same and direct the respondents to grant exemption to the petitioner's institution from payment of Property Tax for the petitioners college buildings including hostel used for the purpose of Education.

For Petitioners : Mr.C.Johnson

For Respondents : Mr.T.C.Gopala Krishnan

COMMON ORDER

The claim of the writ petitioners for grant of exemption from the payment of property tax to Chennai Corporation was negatived by 1st respondent. The same is under challenge in these writ petitions.

2.The property tax in respect of the petitioners' institution was revised. The petitioner sought exemption of the same and it was rejected by the first respondent vide proceedings dated 23.02.2016. The said order is under challenge in these writ petitions. The facts in nut shell narrated by the learned counsel appearing on behalf of the writ petitioners is that the writ petitioners are institutions and providing charities and collecting lesser fees from the students studying in the petitioner's institution.

3.M/s.Dhanraj Baid Jain College (Arts and Science), the petitioner in W.P.No.12048 of 2016 is an aided college and M/s.Misrimal Navajee Munoth Jain Engineering College, the petitioner in W.P.No.14613 of 2016 is an unaided college.

4.The learned counsel appearing for the writ petitioners states that the writ petitioners submitted an application seeking exemption from the payment of the property tax under Section 101(C) of the Chennai City Municipal Corporation Act [hereinafter called as "the Act"]. However, the same has been rejected by the respondent Corporation, without assigning any proper reasons.

5.The learned counsel appearing for the writ petitioners states that the escaped assessment imposed on the writ petitioners are unsustainable on the ground that the writ petitioners were regularly paying the property tax as assessed by the erstwhile Thoraipakkam Village Panchayat and the erstwhile Sholinganallur Panchayat. Therefore, the escaped assessment cannot be imposed after a lapse of about 2 ½ years. The property tax was being paid by the writ petitioners till the year 2016. Therefore, the tax now imposed is contrary to the provisions of the Act.

6.It is further contended that in the impugned order itself it is admitted that as per Section 101 of the Act exemptions are applicable only to the core city area (the areas previously existing in Chennai Corporation limit).

7.Such being the observations made in the impugned order, the writ petitioners' colleges that are situated in the outskirts of the Chennai City Corporation, should be given exemption. Thus, the impugned orders are liable to be scrapped.

8.The learned counsel appearing on behalf of the respondent Corporation opposed the contention by stating that undoubtedly the revised assessment was imposed in respect of the writ petitioners premises during the year 2016. However, the erstwhile Thoraipakkam Village Panchayat had made an under assessment in respect of the premises belonging to the writ petitioners college. Therefore, the corporation is entitled to revise the property tax if it is found that there was an under assessment of the property tax. While correcting the under assessment, escaped assessment if any, can also be imposed under Section 137 (B) of the Act. Thus, the respondents are empowered to assess the escaped assessments and accordingly, fixed the revised property tax and the assesses are liable to pay the same in accordance with the provisions of the Act.



9.Exemption cannot be granted in a routine manner under Section 101 (C) of the Act and it has to be granted only if an application is made by the writ petitioners along with necessary documents. In the event of submitting the application along with necessary documents, the same has to be considered in accordance with the provisions of the Act. Exemption as per Section 101(C) of the Act can be granted by invoking the power under Section 101(C) of the Act by the competent authorities. Admittedly, no such exemption has so far been granted in respect of the petitioners' institutions. The petitioners have not produced any such order of exemption granted by the competent authorities under the provisions of the Act. In the absence of producing any such order of exemption granted by the competent authorities, this court cannot consider the same.

10.Exemptions can never be presumed in the absence of any order of exemption passed by the competent authorities under the provisions of the Act. Thus, the writ petitioners are liable to pay the property tax assessed.

11.The question arises as to whether the writ petitioners can be directed to pay the property tax made prior to the year 2016.

12.It is brought to the notice of this court that there was an under assessment in respect of the petitioners' premises by the erstwhile Thoraipakkam Village Panchayat. The under assessment had been rectified by the officials of the Chennai Corporation and while effecting the revised assessment, the escaped assessment has also been calculated. Accordingly the petitioners were directed to pay the arrears of the property tax. Thus, there is no irregularity and illegality in respect of correcting the under assessment. When the statute provides powers to the authorities competent to rectify the under assessment and accordingly the escaped assessment of property tax, there is no reason to reverse the same in the present writ petitions. If at all the petitioners claim that they are educational institutions, which are to be exempted under the provisions of the Act, it is left open to them to approach the competent authorities by submitting proper application along with necessary documents for the purpose of considering the same. However, as of now, there is no such exemption in favour of the writ petitioners. Therefore, the petitioners are liable to pay tax as assessed by the respondent Corporation. Even otherwise, as against the order of demand passed by the Assistant Revenue Officer, an appeal lies to the Commissioner under the provisions of the Act. After the appeal before the Commissioner, an aggrieved person shall approach the Taxation Appeal Tribunal under Chapter 9 Rule 12. Thereafter further appeal lies under Chapter 5 Rule 15 of Municipal Tax Appeal before the Principal Judge, City Civil Court, Chennai.

13.Thus, without exhausting the exists appeal provisions, as contemplated under the provisions of the Act, no writ petition can be entertained, The statutory remedies, available under the Act, are efficacious and the writ petitioners can adjudicate all such disputed facts by producing all documents and adducing evidence.

14.This court is of the opinion that such application for exemption and disputed facts cannot be adjudicated in a writ jurisdiction under Article 226 of the Constitution of India. When the writ petitioners have raised certain disputes, they are at liberty to approach the Competent Appellate Authority and thereafter, the Taxation Appeal Tribunal under the provisions of the Rules and Acts. Without exhausting the remedies as available under the Act, the present writ petitions cannot be entertained at all. This Court cannot adjudicate the merits and demerits of the contentions raised in the present writ petitions. Accordingly, the writ petitioners, as of now, are liable to pay the entire arrears of property tax, as calculated by the respondent Corporation.

15.If at all, the same is reversed on account of any other reason, including the exemption if any granted, the excess property tax shall be adjusted towards the future payment of property tax.

16.Accordingly, the following orders are passed:-

1. The impugned orders passed in both the writ petitions stand confirmed and the claim of the writ petitioners stands rejected;

2. The writ petitioners are directed to pay the arrears of property tax of Rs.41,58,636/- in W.P.No.12048 of 2016 and Rs.68,94,302/- in W.P.No.14613 of 2016, within a period of four weeks from the date of receipt of a copy of this order;

3. In the event of not paying the arrears of tax within the time stipulated, the respondents are directed to initiate appropriate proceedings to recover the same in respect of the properties belong to the writ petitioners, by following the procedures as contemplated under the Act.

17.Accordingly, the writ petitions stand disposed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)



//True Copy//

Sub Assistant Registrar

To

1.The Assistant Revenue Officer,
Zone – 15, Greater Chennai Corporation,
No.120, Rajiv Gandhi Salai (OMR),
Sholinganallur, Chennai - 600 003.

2. The Commissioner,
Corporation of Chennai,
Park Town, Chennai - 600 003.

+2cc to Mr.C.Johnson, Advocate sr.no.65675
+1cc to Mr.T.C.Gopalakrishnan, Advocate sr.no.65702

W.P.Nos.12048 and 14613 of 2016

ev(co)
nr 29/10/2018