IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.35429 & 35430 of 2006
and
M.P.Nos.1 & 1 of 2006

Seventh Day Adventist Matriculation
Higher Secondary School,
rep. By its Principal,
Mr.John Raj David
Appavo Nagar,
Athipalli,
Kelamangalam Road,
Midukarapalli Post,
Mathigiri,
Krishnagiri
...Petitioner in W.P.No.35429 of 2006

Sreevidhya Mandir Matriculation
Higher Secondary School,
rep. By its Correspondent,
Mr.V.Chanrasekaran ...Petitioner in W.P.No.35430 of 2006

Vs.

The Executive Officer,
Special Grade Town Panchayat,
Mathigiri,
Krishnagiri District,
Pin Code - 635 110 ...Respondent in W.P.No.35429 of 2006

The Executive Officer,
Special Grade Town Panchayat,
Uthangarai,
Krishnagiri District
..Respondent in W.P.No.35430 of 2006

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari or any other appropriate writ, order, direction in the nature of writ to call for the records of the respondents herein in his proceedings Na.Ka.No 668-2005(A1) dated 14.08.2006 and No.03470 dated 06.09.2006 and quash the same.

For Petitioners: Mr.G.Anabayachozhan(in both W.ps)

For Respondents: Mr.N.Subbarayalu(in both W.ps)

COMMON ORDER

The present writ petitions have been filed challenging the demand notices dated 14.08.2006 and 06.09.2006 in respect of the property tax arrears to be paid by the writ petitioners.

2.The Writ Petitioners are the Seventh Day Adventist Matriculation Higher Secondary School and Sreevidhya Mandir Matriculation Higher Secondary School.

3.The learned counsel appearing on behalf of the Writ Petitioners state that the petitioners are entitled to get exemptions from payment of property tax under Rule 15 (c) of the Tamil Nadu Panchayat (Assessment and Collection of Taxes) Rules, 1999. In spite of the exemption granted under Rule 15 (c) of the above Rules, the respondents had issued the Demand Notices. Thus, the writ petitioners are constrained to move the present writ petitions.

4.The learned counsel appearing on behalf of the respondents disputed the grounds raised in the Writ Petition by stating that Rule 15 (c) of the Tamil Nadu Panchayat (Assessment and Collection of Taxes) Rules, 1999 is inapplicable to the case of the Writ Petitioners. The respondents are the Executive Officer, Special Grade Town Panchayat and the District Municipalities Act is applicable to the respondents. Thus, any demand regarding the property tax is to be made by the respondents only by following the procedures as contemplated under the provisions of the District Municipalities Act. Thus, the very ground raised in the writ petitions is untenable.

5.The learned counsel further contended that even with reference to Rule 15 (c) of the Tamil Nadu Panchayat (Assessment and Collection of Taxes) Rules, 1999, the Hon'ble Full Bench of this Court passed an order in the case of The President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District Vs. Kamaraj College Engineering and Technology, reported in 2009 (5) CTC 289 and the relevant paragraphs 17 and 18 are extracted hereunder:

> "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 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 of 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."

6.As per the judgments of the Full Bench, the Rule 15 (c) of the Tamil Nadu Panchayat (Assessment and Collection of Taxes) Rules, 1999 is not mandatory and the property tax is to be collected even from the educational institutions, if they are otherwise liable to pay.

7.This being the legal principles settled, the case of the writ petitioners is devoid of merits and stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

mrn/kak

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Executive Officer,
Special Grade Town Panchayat,
Mathigiri,
Krishnagiri District,
Pin Code - 635 110.

2.The Executive Officer,
Special Grade Town Panchayat,
Uthangarai,
Krishnagiri District.

W.P.Nos.35429 & 35430 of 2006

kak(07/01/2019)