IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13445 of 2011
and M.P.No.2 of 2011

Kovai Medical Centre Research & Educational Trust,
Rep. by its Authorized Signatory,
Avinashi Road,
Coimbatore District - 641 014. ... Petitioner

Vs.

The Executive Officer,
Kalapatti Town Panchayat,
Kalapatti, Coimbatore District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari, calling for the records of the respondent relating to the impugned Demand Notice bearing Assessment No.9030 to 9032 dt.25.8.2009 of the respondent and quash the same in so far as they relate to the petitioner Institution.

For Petitioner : Mr.K.Shakesphere

For Respondent : Mr.G.Sankaran

O R D E R

Heard Mr.K.Shakesphere, learned counsel for the petitioner and Mr.G.Sankaran, learned counsel appearing for the respondent.

2. The petitioner has challenged the demand notice issued by the respondent Town Panchayat, demanding property tax from petitioner which is a registered trust, started solely for the purpose of educational activities.

When the case was heard on 12.7.18, learned counsel for the petitioner placed reliance on the decision of the Madurai Bench of this Court in the case of Mr.A.Subramanian, Managing Trustee of Merit Educational Charitable Trust-cum-Principal of Merit Matriculation School, Ambasamudram, Tirunelveli District, Vs. The Executive Officer, III Grade Municipality, Ambasamudram, Tirunelveli District, reported in 2010 (4) CTC 31 and submitted that in terms of section 83(1)(c) of the Tamil Nadu District Municipalities Act, the buildings used for educational purposes, including hostels attached thereto, are exempted from assessment of Property tax. It is submitted that the case on hand is squarely covered by the said decision, which is rendered following the earlier decisions of the Hon'ble Division Bench of this Court. Mr.G.Sankaran, learned counsel for the respondent Town Panchayat requested time to verify the legal position.

3. Today, the learned counsel for the respondent fairly submits that the order in the case of Mr.A.Subramanian [cited supra] would clearly cover the case on hand.

4. At this juncture, it would be beneficial to quote the operative portion of the decision in the above said case of Mr.A.Subramanian [cited supra].

> "10. A perusal of the Full Bench Judgment reported in the case of President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District v. Kamaraj College of Engineering and Technology Managing Board, rep. by its Secretary S.P.G.C., Srimurugan Virudhunagar, 2009 (5) CTC 289 : 2009 (8) MLJ 245, would reveal that with reference to Tamil Nadu Panchayat Rules and Act made therein, having regard to the provisions of Sections 171, 172 and 176 of the Tamil Nadu Panchayat Act, Rule 15(c) was interpreted and is was held as follows :
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> > "Rule 15 is a subordinate legislation which cannot over-ride 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 under Rule 15 it is not mandatory to grant exemption from house tax, but it is an enabling provision allowing the Village Panchayat to grant exemption to a class of buildings a 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.

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".

Therefore, having regard to the specific provision of Section 171, which mandates Village Panchayat to levy house tax on all houses of the Village Panchayat and the provisions contained under Section 176, by which no exemption shall be granted to be payment of tax except in accordance with Rules, it was held that though Rule 15(c) permits exemption to be given to buildings used for educational purposes, that cannot be claimed as of right and exemption has to be given by Municipal Council. But the provision of Tamil Nadu District Municipalities Act is different and under that Act exemption is given under Section 83(1)(c) of the Tamil Nadu District Municipalities Act and there is no total prohibition from granting exemption to certain buildings from the payment of house tax under the said Act.

11. Section 81 of the Tamil Nadu District Municipalities Act deals with Description and classes of Property Tax: As per Section 81(1) If the council by resolution determines that a Property Tax shall be levied, such tax shall be levied on all buildings and lands within municipal limits save those exempted by or under this Act or any other law.

Therefore, by resolution passed in the Municipal Council, Property Tax shall be levied on all buildings and lands, unless exemption is granted under the Act.

12. In other words, Section 81 of the Tamil Nadu District Municipalities Act clearly states that in the absence of any exemption under the Act or any other law, all buildings can be assessed to Property Tax on the basis of the resolution passed in the Municipal Council.

13. Section 83 of the Tamil Nadu District Municipalities Act deals with general exemption and as per Section 83(1)(c) of the Act, buildings used for educational purposes including hostel attached thereto are exempted.

Therefore, having regard to Sections 81 and 83 of the Tamil Nadu District Municipalities Act, the Act itself provides for exemption from the levy of Property Tax in respect of buildings used for educational purpose and therefore, the buildings used for educational purpose cannot be assessed to Property Tax. In the case of Panchayat, while dealing with the Property Tax in respect of house, Section 171 of the Tamil Nadu Panchayat Act says that every Village Panchayat shall levy in the Panchayat Village house tax and as per Section 172, house tax shall be levied on all houses in every Village Panchayat. Therefore, it was mandated that every house in the Panchayat shall be assessed to Property Tax.

14. Further, under Section 176 of the Tamil Nadu Panchayat Act, no exemption from the payment of any surcharge tax specified in Section 171 shall be granted by the Village Panchayat, except in accordance with the rules. Therefore, when the Section prohibits the granting of exemption except in accordance with Rules, though the Rules provide for granting exemption to buildings for educational purpose, it was held by the Full Bench of this Honourable Court that exemption is not automatic, unless exemption is granted by the Village Panchayat by passing a resolution, buildings used for the educational purpose cannot claim exemption from the payment of Property Tax as of right. But

in the case of Municipalities, as stated supra, Section 81 of the Tamil Nadu District Municipalities Act, makes it clear that tax shall be levied on all buildings on the basis of the resolution passed by the Municipal Council save those exempted by or under this Act or any other law. Therefore, Section 81 of the Tamil Nadu District Municipalities Act which deals with levy of Property Tax also mention about exemption, that can be given to certain buildings from the assessment of Property Tax and as per Section 83(1)(c) of the Tamil Nadu District Municipalities Act, buildings used for educational purposes are exempted.

15. Further, having regard to the exemption granted under Section 83(1) of the Tamil Nadu District Municipalities Act, the question of aided or un-aided or minority or non-minority does not arise and any building used for educational purposes including hostels are exempted.

16. It was contended by the learned counsel appearing for the Respondent, Mr.M.Saravanakumar that only buildings used for educational purpose are exempted, even according to Section 83(1)(c) of the Tamil Nadu District Municipalities Act and in this case apart from class rooms and hostels other buildings such as office of the educational institution can be assessed to Property Tax and exemption cannot be claimed for those buildings. The argument of the learned counsel appearing for the Respondent cannot be accepted, having regard to the wordings used Section 81(1)(c) of the Tamil Nadu District Municipalities Act. As per Section 83(1)(c) of the Tamil Nadu District Municipalities Act, buildings used for educational purpose and hence, hostels are given exemption. The phrase used "buildings for educational purpose", in my opinion, it includes not only class rooms, but also office rooms, which are essential and integral part of an educational institution and without an office, an educational institution cannot be run. Therefore, the buildings used for running office is also essential for imparting education and therefore, those buildings will also come under the category of educational purpose. Therefore, having regard to the specific provisions of Section 83(1)(c) of the Tamil Nadu District Municipalities Act,

the buildings used for educational purposes of the Petitioner's institution are exempted from assessment of Property Tax and the Respondents cannot claim any levy for those buildings."

5. Thus, following the above referred decision, the writ petition is allowed and the impugned order is quashed. Furthermore, the impugned order cannot be sustained in the light of the amendment by Act 6 of 2018, wherein amendments were brought to Section 83 of the Tamil Nadu District Municipalities Act.

6. In the result, the writ petition is allowed and the impugned Demand Notice bearing Assessment No.9030 to 9032 dt.25.8.2009 of the respondent is quashed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

+1cc to Mr.K.Shakespeare, Advocate Sr.50628

W.P.No.13445 of 2011
and M.P.No.2 of 2011

sj[co]
srg 10/08/2018