IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.6204 of 2004

Virudhunagar Hindu Nadarkalukku
Pathiamana Senthilkumara Nadar
Uyarthara Kalluri Paripalana Sabai,
rep. by its Secretary, Virudhunagar. ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Revenue Department, Fort St. George,
Chennai-600 009.

2.The Special Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai-600 005.

3.The District Revenue Officer,
Tuticorin.

4.The Asst. Commissioner of
Urban Land Tax, Tuticorin.

5.The Tahsildar,
Tuticorin. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records comprised in G.O. (1D) No.685 dated 17.09.2003, Revenue Department on the file of the Secretary to Government, Revenue Department, Chennai-600 009, the first respondent herein and quash the same and consequently direct the respondents to grant exemption in respect of the lands owned by the petitioner in Survey Nos.2909 and 2914 (Meelavittan Village), Survey Nos.2461/1 and 2462/1 (Tuticorin Village).

For Petitioner : Mr.S.S.Mathivanan

For Respondents: Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.S.S.Mathivanan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents.

2.The petitioner has filed this writ petition challenging the order passed by the first respondent rejecting the petitioner's claim for exemption in respect of the lands owned by the petitioner in Survey Nos.2909 and 2914 (Meelavittan Village), Survey Nos.2461/1 and 2462/1 (Tuticorin Village). The petitioner's case is that the petitioner 'Sabai' was formed in the year 1948 with main objects viz., to administer and maintain a college; to establish new institutions for imparting education in engineering, agriculture, textile etc.; to open educational institutions for women; and to develop activities for the public in general. The petitioner was registered under the Societies Registration Act, 1860 in the year 1948 vide Registration No.9/1948 and also registered as a charitable trust under Section 12 (a) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The petitioner has also been granted income tax exemption under Section 80G of the Act.

3.The Government of Tamil Nadu, vide G.O.Ms.No.2000, Home, dated 16.08.1976, granted exemption from the provisions of the Tamil Nadu Buildings (Lease & Rent Control) Act, 1960, in respect of the buildings owned by the petitioner and other similar placed persons. The property at Tuticorin, lying within the urban land limits was gifted to the petitioner towards the endowments insisted by the University of Madras in August 1948. Thiru S.T.Sankara Nadar Educational Trust donated this property to the petitioner by virtue of a registered Gift Deed dated 12.10.1949, registered as Document No.1558/1949. It is the petitioner's case that the income derived from the said urban land is used for charitable purpose of imparting collegiate education and other objects of the trust for which it was established and therefore, the petitioner applied for exemption under Section 27(1) of the Urban Land Tax Act (in short "ULT Act") by application dated 23.05.1974.

4.While the application for exemption from the provisions of the ULT Act was pending before the first respondent, the fifth respondent sent demand notices dated 06.12.2002, for which, the petitioner sent a reply on 10.02.2003, informing the fifth respondent about the pendency of the application for exemption. The petitioner thereafter, filed a writ petition in W.P.No.14396 of 2003, to direct the first respondent to pass orders on the application for exemption and to forbear the fifth respondent from collecting urban land tax from the petitioner till orders are passed by the first respondent. The writ petition was disposed of by order dated 16.06.2003, directing the first respondent to dispose of the application for exemption and further directed the fifth respondent not to collect any tax from the petitioner till the disposal of the application. By the impugned order, the petitioner's claim for exemption has been rejected.

5.After hearing the learned counsel on either side and carefully perusing the materials placed on record including the parawise comments given by the Assistant Commissioner, Urban Land Ceiling and Urban Land Tax, Madurai, to the Special Government Pleader (Taxes), vide letter dated 10.02.2017, this Court is fully convinced that the impugned order has been passed in total violation of the principles of natural justice. This Court is convinced to say so for the following reasons.

6.Firstly, the Government did not take any independent decision in the matter, but, has referred to a report of a committee, which is said to have examined the matter. Admittedly, the petitioner was not furnished with the copy of the report of the committee and they were kept in dark as to on what basis the committee did not recommend the petitioner's case. That apart, no opportunity of personal hearing was granted to the petitioner and the petitioner's case has been merely rejected on the ground that they have not submitted documentary evidence beyond reasonable doubt to prove that the income derived is utilized only for the fulfillment of the object of the trust.

7.Admittedly, the first respondent is not deciding a criminal case to decide based on the evidence beyond reasonable doubt. The petitioner's claim is for exemption from payment of urban land tax and all that is required to be seen by the first respondent is whether the petitioner satisfies the parameters. Therefore, unless and until, the petitioner is called upon to produce the necessary documents, it cannot be stated that the petitioner's claim is not sustainable. The manner in which the first respondent has decided the application for exemption cannot be appreciated and it is a result of non application of mind, rather no independent application of mind. Thus, for the above reasons, the impugned order is liable to be set aside.

8.Accordingly, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration. The petitioner had the benefit of an interim order subject to the condition that the petitioner pays 50% of the amount demanded. This order has been complied with and the interim order has been in force from 2004 on wards. Therefore, till the matter is decided by the first respondent afresh, no coercive action shall be initiated against the petitioner for recovery of any urban land tax in respect of the property in question. The authorised representative of the petitioner shall be heard in person before a decision is taken on the petitioner's application for exemption. No costs.

abr

Sd/-
Assistant Registrar(Cs IX)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
The State of Tamil Nadu,
Revenue Department, Fort St. George,
Chennai-600 009.

2.The Special Commissioner and
Commissioner of Land Reforms,
Chepauk, Chennai-600 005.

3.The District Revenue Officer,
Tuticorin.

4.The Asst. Commissioner of
Urban Land Tax, Tuticorin.

5.The Tahsildar,
Tuticorin.

+1cc to Special Government Pleader SR.No500
+1cc to Mr.S.S.Mathivanan, Advocate SR.No.492

LRS(co)
sm :24.1.2018

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