

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4882 of 2008

The Institute of Franciscan
Missionaries of Mary,
Rep. by its Secretary,
Child Jesus Convent, P.B.No.17,
Thiruchirappalli-620 001.

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. by its Commissioner & Secretary,
Revenue Department, Fort St. George,
Madras-600 009.
- 2.The Commissioner of Land Reforms,
(U.L.C. & U.L.T.), Chepauk
Madras-600 005.
- 3.The Assistant Commissioner (Land Reforms),
(Urban Land Tax Office),
M.R.C. Complex, (Near Chinthamani)
Tolgate, Thiruchirappalli-20.
- 4.The Tahsildar & Urban Land Tax Officer,
Town Hall, Thiruchirappalli-620 002.

...
Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent pertaining to the impugned order issued by the first respondent in his reference in G.O.No.149 (Na.Ni.Wu.3(2) Revenue Department) dated 28.02.2006, to quash the same in respect of the demand relating to the extent of 6 grounds 1423 sq.ft. in T.S.No.9, in Ward No.J and Block No.4 from Fasli 1385 to 1398 (i.e., from 1975 to 1988) and in respect of other lands of the petitioner society from fasli 1401 to 1417 in T.S.No.9, Ward No.J, Block No.4, and to direct the respondents to pass suitable orders granting exemption from the levy of Urban Land Tax in respect of any extent of 6 grounds 1423 sq.ft. in T.S.No.9, in Ward No.J and Block No.4 and of an extent of 57 grounds 144 sq.ft. in respect

of all the other lands in T.S.No.9, in Ward No.J and Block No.4 situated within the campus of the petitioner society with effect from 1975 onwards respectively as per Section 29(h) of the Urban Land Tax Act 12 of 1966 as amended by Act 49 of 1975.

For Petitioner : Sr.M.B.Dominique

For Respondents : Mr.J.Pothiraj,
Special Government Pleader

O R D E R

Heard Sr.M.B.Dominique, learned counsel for the petitioner and Mr.J.Pothiraj, learned Special Government Pleader for the respondents.

2. The petitioner is a society, by name Institute of Franciscan Missionaries Mary, represented by its Secretary, which has its campus at Thiruchirappalli. The petitioner Society is registered under the Society's Registration Act and under Section 12 A of the Income Tax Act, and the payments made to the petitioner Society are exempt from payment of income tax. The petitioner society has established a Hospital, a Nursing School, a College of Nursing and a Health Centre in Nagamangalam Village, Alandur Panchayat, Trichy District. When this writ petition was filed in the year 2008, the petitioner would state that the Society is running 60 health centres in and around Trichy and the said hospital was opened in the year 1945, at the request of the local people. The hospital was registered under the Government of India approved list dated 21.02.1957.

3. In 1966, the Nursing School was established, which was attached to the hospital. The Government, vide G.O.(Ms) No.1929, Health Department, dated 01.11.1996, recognized the hospital for the training in General Nursing. The hospital was declared as an educational institution by the Director of Medical Education, by proceedings dated 23.11.1966. The campus also consists of a hostel for nursing students and staff quarters. The Government, by G.O.(Ms) No.235 dated 27.09.2006, permitted to start a college of nursing, as it was declared as an educational institution as early as in the year 1966 by G.O.Ms.No.1929 dated 01.11.1996. The petitioner Society owns an extent of 62 grounds and 9603 square feet in Ward J, Block No.4 in T.S various survey numbers. The campus of the hospital has been assigned door nos.29A & 29 measuring an extent of 16 grounds in Ward K, Block No.22 in T.S.Nos.38 & 40.

4. The petitioner was assessed to urban land tax in the year 1975 for the entire extent of 79 grounds and 1567 square feet. Therefore, the petitioner applied to the Government for exemption. The Government, by G.O.Ms.No.1201, dated 22.05.1975, granted exemption to an extent of 16 grounds. However, no orders were passed in respect of the lands situated in door nos.29A and 29 in Ward J, Block No.4 in T.S.No.9 measuring an extent of 63 grounds and 1567 square feet. Therefore, a fresh petition was submitted on 16.10.1990 seeking exemption from 1975. The Government, by G.O.Ms.No.558, dated 18.05.1992, granted exemption from payment of urban land tax. However, the exemption was granted only from 1989 (fasli year 1399) instead of 1975, as sought for by the petitioner and the extent for which exemption was granted was only for 57 grounds and 144 square feet. The petitioner would state that they were unaware about the said order and came to know of it only after the fourth respondent issued notice directing the petitioner to pay urban land tax for an extent of 6 grounds and 1423 square feet for a period of 14 years, i.e., from 1975 to 1988 (fasli years 1385 to 1398) amounting to Rs.60,893/-.

5. The petitioner had written letters dated 21.09.1994, 30.11.1994, 24.02.1995 and 20.04.1995 and requested that exemption has to be granted under Section 29(h) of the Urban Land Tax Act, 1966 (for brevity "the ULT Act), since the hospital has been declared as an educational institution by the Government as early as in the year 1966 vide G.O.Ms.No.1929. However, no orders were passed and therefore, the petitioner filed Writ Petition No.16174 of 1975 to quash the said order and to direct the first respondent therein to grant exemption. The writ petition was dismissed with a direction to the petitioner to file a fresh petition for exemption in respect of the lands, which were not covered in the earlier order of exemption for which six months time was granted. The petitioner presented a petition for exemption dated 30.10.2001. Though the petition was filed for exemption under Section 29(h) of the ULT Act, no action was taken by the first respondent and no enquiry was held for more than three years. On 29.03.2005, a telegram was received by the petitioner from the office of the first respondent calling upon the petitioner to appear for enquiry on 06.04.2005 at 11:30 a.m. Accordingly, the representatives of the petitioner appeared for the enquiry and requested for postponement to a future date. Though there was a specific request for an adjournment, no reply was received from the first respondent and they were shocked to receive the Government Order dated 28.02.2006 in G.O.No.149.

6. It is submitted that the petitioner reliably understands that based on the enquiry and personal inspection of the campus, a report was prepared by the Assistant Commissioner, which fully supports the case of the petitioner that there are educational institutions and entitled for exemption under Section 29(h) of the ULT Act. With these facts, the petitioner is before this Court challenging the impugned order and seeking for a direction to grant exemption to the petitioner under Section 29(h) of the ULT Act.

7. The third respondent, has given detailed written instructions to the learned Government Pleader (Writs) vide letter dated 02.07.2008.

8. After narrating about the facts and circumstances of the case contending that Section 29(2) of the ULT Act provides exemption in respect of hospitals maintained by Government, any local authority or such other authority specified by the Government and it is in respect of those lands used for the purpose of hospitals or buildings from which income is derived have to be constructed. Therefore, it is submitted that there cannot be automatic exemption and such exemption is to be applied and a case has to be made out with supporting documents for exemption.

9. It is further submitted that the petitioner cannot compel the respondents to grant exemption with retrospective effect. Further, it is submitted that the expenditure statement furnished by the petitioner Society reveals that out of the total income received, only 32% of the amount is utilized in spite of 90% of income derived by the petitioner Society by means of rent, etc.

10. It is further stated that the Mother Superior of the institution has sent a petition stating that they have been exempted from payment of land tax as per G.O.No.558 based on the market value as on 01.07.1981. Therefore, it is submitted that the petitioner Society may apply to the Government for exemption from payment of urban land tax if they so desire.

11. After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record, this Court observes that both the petitioner as well as the respondent Department have not addressed the claim for exemption under the proper statutory provision. Under the ULT Act, there

are two provisions, which give power of exemption or reduces urban land tax. One such power is conferred on the Government under Section 27 and the other is under Section 29.

12. The power under Section 29 is an absolute power, as it states that nothing in the Act shall apply to the lands, which are enumerated in clauses (a) to (l) in Section 29. Whereas, Section 27 is a power of Government, where the Government, if satisfied that payment of urban land tax will cause undue hardship, grant exemption to such lands or persons from payment of urban land tax.

13. The petitioner's claim for grant of exemption appears to have been made under Section 27, as in the representations made by them, they have referred to Section 27(1) of the ULT Act. Ultimately, they have corrected themselves and they claimed the same under Section 29 of the ULT Act and that is the prayer sought for in this writ petition as well.

14. To be entitled to exemption under Section 29, the lands in question have to be brought under any of the clauses in the said section. The petitioner would seek to classify the lands held by them under Section 29(h) of the ULT Act which deals with any urban land used by schools, colleges or universities for the purposes directly connected with education, but not including any urban land owned by such educational institutions, which is vacant or in which buildings from which income is derived have been constructed.

15. The petitioner's case is largely pitched upon the order passed by the Government in the year 1966 in G.O.1929 dated 01.11.1966 declaring the petitioner hospital as an educational institution. Obviously if there is an educational institution, there should be facility for the students and teachers such as hostel facility, accommodation for teachers, etc. An educational institution would require doctors, workers, professors as well as other nursing staffs and etc. Thus, for all the purposes, if an institution has been declared by the Government as an educational institution, the respondent should approach the matter in a holistic manner and cannot disjunct the available facility to the educational institution so as to bring it out of the purview of the grant of exemption.

16. The Hon'ble Division Bench of this Court in the case of Southern India Education Trust v. The Government of Tamil Nadu

in CDJ 1999 MHC 733, considered some what identical issue and brought out the distinction between the exemption under Sections 29 and 27 and held as follows:

"(4) A reading of both the provisions would disclose that while section 29 deals with a total and mandatory exemption, section 27 of the Act contemplates discretionary exemption which the Government is entitled to grant subject to the assessee satisfying the required criteria. In other words, the exemption under section 29 of the Act is automatic, mandatory and total and there is no discretion left with the Government to refuse the grant of exemption, if the assessee fails within any one of the categories enumerated thereunder. When once an institution is either notified or is shown to be covered under section 29, the exemption is complete and unconditional and the Revenue has no discretion to ignore or to refuse the exemption or to pass any order of assessment.

(6) Now turning to the facts of the present case, exemption was granted under section 29 of the Act with reference to 239 grounds and only an extent of 14 grounds were assessed to tax since the authorities found that the said extent was not utilised for educational purposes. According to the learned counsel for the appellant, since the entire income of the trust was utilised only for educational and charitable purposes, the exemption ought to have been granted under section 29(h) of the Act itself. We are unable to uphold the said contention. Explanation n to section 29 (h) of the Act is pertinent in this context. It is only such of those properties and buildings which are directly concerned with the educational purposes, such as play grounds, hostels, buildings used for colleges; schools, staff quarters etc., which are qualified to be exempted and not properties which are unconnected with the educational purposes. The entitlement for exemption under section 29(h) of the Act does not depend only upon the nomenclature or the avowed objectives of the institution. But the actual purpose for which the properties are utilised or put to use, has to prevail. It is not disputed that the properties assessed for tax are properties let out for commercial purposes, totally unconnected with educational purposes. The said properties were therefore rightly excluded from the applicability of section 29(h) of the Act and infact the appellant himself had applied for exemption only under section

27 of the Act as could be seen from the impugned order. It is true that there can be no estoppel against the statute and the assessee would be entitled to exemption under section 29 of the Act if the properties would fall under that provision. But there being no dispute over the fact that the portion of the property which was assessed for tax has nothing to do with educational purposes, it follows that the exemption sought for would fall only under section 27 and not under section 29(h) of the Act."

17. The above referred decision of the Hon'ble Division Bench will apply with full force to the petitioner's case, as both the petitioner before this Court as well as the appellant before the Division Bench were minority institutions. This Court had an occasion to consider some what an identical issue in the case of Mahaveer Jainkalyan Sangh v. The Special Thasildar (ULT) and another in CDJ 2016 MHC 4615. After taking note of the decision of the Hon'ble Division Bench in Southern India Education Trust (supra), the Court considered as to what is the distinction between exemption under Sections 29 and 27 and held as follows:

"7. Mr.V.Ramesh, the learned counsel also placed for consideration before this Court the decision of the Hon'ble Supreme Court in the case of Agastyar Trust v. Commr. & Secretary to Govt., Revenue Deptt., reported in AIR 2005 SC 1824, wherein, the Hon'ble Supreme Court clearly pointed out the distinction between the exemption under Section 29 and Section 27 of the Act. At this juncture, it would be beneficial to refer to th relevant paragraph of the Hon'ble Supreme Court judgment:-

"18. While under Section 29, the exemption is granted by the statue itself and is automatic in respect of the urban lands owned by the authorities or institutions referred to therein, the exemption under Section 27 is not so. For exemption under Section 27, power is vested with the State Government to exempt the lands or persons from payment of tax "if the Government is satisfied that the payment of urban land tax would cause undue hardship". Such power can be exercised by the Government only on specific application by the person or institution seeking exemption and on placing satisfactory material for exercise of such power. The exemption under

Section 27 is not a matter of right and does not follow as a matter of course."

8. In the light of the above legal position, this vital issue has to be considered and the matter is now pending before the Urban Land Tax Tribunal. At this juncture, the first respondent cannot sustain the impugned demand on the ground that the petitioner has not applied for exemption under Section 27 of the Act, when the petitioner's claim that they are exempted in terms of Section 29 of the Act and the difference between both enactments being clearly distinguishable, the impugned order has to be held to be unsustainable in law.

9. Accordingly, the Writ Petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed."

18. The above decisions are clear answer to the stand taken by the respondents. Thus, if the petitioner institution is declared as an educational institution for all purposes, and the lands and buildings, which are used for the purpose of institution and which do not fall within the two exceptions contained in clause (h) of Section 29, then the petitioner would be entitled for grant of exemption. However, since the matter has not been dealt with by the Government under Section 29 of the ULT Act, at any earlier point of time, this Court is inclined to remit the matter to the first respondent for fresh consideration.

19. Thus, for the above reasons, this writ petition is allowed, the impugned order is quashed and the matter is remanded back to the first respondent for fresh consideration to take note of the decisions referred above and also the fact that the hospital has been declared as an educational institution and after taking into consideration all facts and circumstances, pass a speaking order. Since the matter is pending for a long number of years, the first respondent is directed to take a decision in the matter within a period of three months from the date of receipt of a copy of this order. Before passing orders,

the first respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner and preferably such enquiry shall be fixed during the month of June 2018. Till a decision is taken by the first respondent in terms of the above direction, no coercive action shall be initiated against the petitioner for recovery of any tax. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner & Secretary,
The State of Tamil Nadu,
Revenue Department, Fort St. George,
Madras-600 009.
- 2.The Commissioner of Land Reforms,
(U.L.C. & U.L.T.), Chepauk
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- 4.The Tahsildar & Urban Land Tax Officer,
Town Hall, Thiruchirappalli-620 002.

+2ccs to Sr.M.B.Dominique, Advocate, S.R.No.31012

Copy To

The Section Officer,
ER Section, High Court,
Madras-104

W.P.No.4882 of 2008

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cs/08/06/18