IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.45755 of 2002
and W.P.M.P.66738 of 2002

Dr.G.D.Boaz Memorial Hospital School
Rep. by Director Dr. P.D.Boaz ... Petitioner

Vs.

1.The Principal Commissioner
Commissioner of Land Reforms
Chepauk, Madras - 5

2.The Assistant Commissioner
Urban Land Tax,
169, Sannathi Street
Adambakkam, Chennai - 88

3.The Special Tashildar
Urban Land Tax (Collection)
Tambaram Taluk, Tambaram ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus, calling for the records of the first respondent dated 16.11.2001 vide reference R.C.10911/2001/C1 and the order of assessment passed by the 2nd respondent in ULT Case No.138/1481 dated 07.12.2001 and the consequent demand notice dated 11.07.2001 of the 3rd respondent and quash the same and further direct the respondents to treat the land as falling under the Tamil Nadu Urban Land Tax Act, 1966 in view of Section 29 of the said Act.

For Petitioner : Mr.V.Ramesh

For Respondents : Mr.J.Pothiraj
Special Government Pleader

ORDER

The petitioner is called Dr.G.D.Boaz Memorial Hospital School and a challenge in this writ petition is to an order passed by the first respondent, who rejected the revision petition filed by the petitioner challenging the order passed by the second respondent.

2. It may not necessary for this Court to make an elaborate exercise to test the correctness of the impugned order as the short point which fall for consideration is whether the petitioner is entitled for exemption under Section 29 of the Act.

3. The Hon'ble Division Bench in Southern India Education Trust Vs. The Government of Tamil Nadu and another reported in 1999 (III) CTC 711, considered the distinction between exemption granted under Section 27 and 29(h) of the Tamil Nadu Urban Land Tax Act, 1966. It was held that 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 falls within any one of the categories enumerated thereunder. It was also held that once an institution is either notified or is shown to be covered under section 29, 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.

4. In the instant case, the petitioner, who is initially a lessee under Dr. M.Santhosam, took the property on lease and established an institution running shelter workshop for rehabilitation of the mentally retarded and also carrying on agricultural operations in a portion of the property. The petitioner purchased the said property from the original owners by a sale deed dated 29.08.1981, registered as Document No.2891 of 1981 on the file of the District Registrar, Madras South. After the petitioner had purchased the property, they being a memorial hospital and school, which is a philanthropic institution claimed that they are entitled for Urban Land Tax exemption. The petitioner relied on the exemption granted by the Income Tax Department under Section 80-G of the Income Tax Act, 1961 vide order dated 25.07.1972 and duly renewed by order dated 09.08.1982. However, the second respondent passed an order assessing the petitioner's property after payment of Urban Land Tax vide Order of Assessment dated 07.12.2001. Aggrieved by the same, the petitioner filed revision petition before the first respondent.

5. In the grounds of revision, the petitioner specifically contended that they are entitled to the benefits under Sections 29(b)(ii), 29(j)(i), (ii) and Section 29(k) of the Act and the order passed by the second respondent without reference to the activities of the petitioner, which fall under many categories of Section 29, cannot be sustained.

6. However, the first respondent, while considering the revision petition, has not dealt with the claim for exemption under Section 29 and rejected the revision petition primarily on the ground that the petitioner school has not agitated about the levy of tax earlier and they have been paying Urban Land Tax. What is important to note is that earlier the petitioner was a lessee in the property and become a lawful owner of the property in the year 1981. As pointed out earlier, there is a distinction between exemption under Section 27 and Section 29 of the Act and when the petitioner made a specific claim that they fall under various provisions of Section 29, the said contention should have been adverted to. Therefore, the impugned order calls for interference. In my considered view, even if the impugned order is set aside the first respondent would not be in a position to ascertain as to whether the petitioner is entitled for exemption in terms of Section 29 of the Act. Therefore, necessarily the matter has to be remanded back to the Assessing Officer, namely the second respondent.

In the result, the writ petition is allowed and the order passed by the first respondent dated 16.11.2001 is set aside. Consequently, the Assessment order dated 07.12.2001 is set aside and the matter is remanded to the second respondent with a specific direction to consider the claim of the petitioner to grant exemption under Section 29 of the Act, after affording an opportunity of personal hearing and after perusal of the documents which the petitioner may furnish. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

gpa

To

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Urban Land Tax,
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3.The Special Tashildar
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+1cc to Government Pleader SR.No.48912

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PA(CO)
GN(07/08/2018)