THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

<u>Writ Petition No.5850 of 2008</u>

<u>Order</u>:

This Writ Petition is filed to declare the action of the respondent – Municipality in issuing the demand notices bearing assessment numbers (i) 1027001609 pertaining to T.B. Sanatorium dated 31.10.2000 and 24.03.2007, (ii) 127007615 pertaining to Holy Family School dated 31.10.2000 (iii) 1027007619 pertaining to Holy Family English Medium School Hostel dated 31.10.2000 (iv) pertaining to Holy Family English Medium School dated 19.12.2007 and (v) pertaining to Holy Family English Medium School Hostel dated 19.12.2007 as illegal and unenforceable in view of the exemptions granted on 01.05.1987, 05.02.1993 and 12.10.1993 and a consequential direction was sought not to demand any tax for the buildings housed (i) T.B. Sanatorium, (ii) AIDS Center, (iii) Holy Family Hostel and (iv) Holy Family English Medium School owned and run by the petitioner society as they come within the purview of exemptions under Section 88 of the A.P. Municipalities Act.

The case of the petitioner, in brief, is that the petitioner is a society registered under the Societies Registration Act and to achieve the objects of the society it is running Schools, Hospitals, Orphanages and T.B. Sanatoriums and several other organizations keeping in view the need of that locality by receiving donations from the philanthropists; the petitioner society being a charitable institution it is enjoying the general exemptions under Section 88 of the Municipalities Act; the respondent having satisfied with the activities of the petitioner society exempted the society from paying property tax with effect from 1987 under Section 88 (c) of the A.P. Municipalities Act vide proceedings dated 01.05.1987, 05.02.1993 And

12.10.1993; the respondent authorities also exempted all the buildings covered under the A.P. Municipalities Act; the respondent without looking into the exemptions as already granted issued the impugned assessment orders, hence the impugned demand notices are contrary to Section 88 (c) of the A.P. Municipalities Act.

Heard learned counsel for the petitioner and learned Standing Counsel for the respondent – Municipality.

Learned Standing Counsel for the respondent – Municipality has relied upon a decision of the Full Bench of this Court passed in Writ Petition No.4214 of 2006 and batch, dated 28.12.2006, wherein it was observed as follows.

> "……………Therefore, in our view, all the recognized educational institutions including hostels, public buildings and places used for charitable purposes are exempt under Section 85 of the Act provided those institutions, hostels, public buildings and places are used for charitable purposes. That the charitable purpose is necessary only for the places other than recognized institutions as suggested by Mr. C. Kondanda Ram, learned counsel, is, according to us, not correct view. However, it will always be a question of fact whether a particular institution is charitable institution or not. Therefore, while answering the reference in the terms as mentioned hereinabove, we make it clear that we have not gone into the question as to whether the petitioners' institutions are charitable institutions or not. Therefore, with the consent of the learned counsel for the parties, we dispose of the writ petitions as well with an observation that before levying of the tax on the petitioners' institutions, the authorities concerned should address to the question as to whether the institutions are charitable institutions or not and for such purpose the petitioners are at liberty to make representations to the concerned authorities within one month and after considering such representations, the authorities may pass appropriate orders since at no point of time the authorities have considered whether the petitioners' institutions are charitable institutions or not. Therefore, we are passing such orders to enable the authorities to pass fresh orders after considering the submissions of the petitioners. We are also quashing the impugned notices. The respondents shall be at liberty to raise fresh

> claims, if any, after hearing the petitioners and deciding their claim that they are charitable institutions.

As per the above judgment, the authorities concerned should consider the issue as to whether the institution is charitable institution or not.

In view of the same, the petitioner is at liberty to file a detailed representation before the respondent with all necessary documents to show that they are eligible for exemption under Section 88(c) of the Municipalities Act within a period of one month from the date of receipt of a copy of this order and, on such representation being made, the respondent shall consider the same and pass appropriate orders thereon in accordance with law. If the respondent comes to a conclusion that the petitioner is eligible for exemption under the Municipalities Act, they should be given the benefit of the same and, if the respondent comes to a conclusion that the petitioner is not eligible for exemption the respondent can proceed with the impugned demand notices.

The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

KONGARA VIJAYA LAKSHMI, J.

Date: 12.11.2018
Nsr

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