IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Writ Petition No.927 of 2018

Shahbabu Education Society, Patur, Distt. Akola, through its Secretary,
Syed Ishaque Syed Nabi, and another
Versus
State of Maharashtra, through its Secretary,
Urban Development Department, Mumbai, and another.

Office Notes, Memoranda of Coram, appearances, Court's orders or directions and Registrar's order	Court's or Judge's orders

Shri Rahul Kalangiwale, Advocate for Petitioners.
Shri A.S. Fulzele, Additional Government Pleader for Respondent No.1.
Shri Sameer Sohoni, Advocate for Respondent No.2.

Coram : Pradeep Nandrajog, C.J. & R.K. Deshpande, J.
Date : 16th August, 2019

P.C. :

1. Heard learned counsel for the parties.

2. Section 132(1)(b) of the Maharashtra Municipal Corporations Act, 1949 reads as under :

"132. General tax on what premises to be levied.

(1) The general tax shall be levied in respect of all buildings and lands in the City except,--

(b) buildings and lands or portions thereof solely occupied and used for public worship or for a public charitable purpose."

3. The petitioner carries on the activities of imparting education from Property No.2396, Ward No.B3, Akola, on which the property tax is levied by the respondent No.2- Municipal Corporation. The petitioners point out that they are running an educational institution and education is a public charitable purpose. The funds generated are by fees and Government grants.

4. Taking the view that imparting education is not a 'public charitable purpose', the impugned order dated 25-1-2018 was passed and the same has been challenged in the Writ Petition.

5. The contention of the learned counsel for the respondent No.2 : Municipal Corporation that the petitioners have a statutory remedy of appeal under Section 406 of the Act of 1949, is noted and rejected for the reason the existence of an alternate remedy is not a bar to the maintainability of a Writ Petition. The availability of an alternate remedy is a factor taken by a Court to decide whether the discretionary remedy under Article 226 of the Constitution of India should or should not be exercised.

6. In the instant case, there is no issue of fact which arises for consideration before us. The issue is one of law. The legal issue is whether imparting education would be a 'public charitable purpose'. We have at hand the decision of the Supreme Court reported as (1992) 3 SCC 390 *Municipal Corporation of Delhi* v. *Children Book Trust*. The same holds that imparting education is a 'charitable purpose'.

7. Thus, the petition is disposed of quashing the impugned communication dated 25-1-2018 issued by the respondent No.2 : Municipal Corporation.

8. The respondents are directed to treat the activity of imparting education as a public charitable activity for the purposes of exemption of tax.

9. The authorities would be entitled to analyze the balance-sheets and the bye-laws of the petitioners, keeping in view the decision of the Supreme Court in *Children Book Trust's* case (supra).

R.K. Deshpande, J. Chief Justice

Lanjewar, PS