IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.34419 of 2003
and
W.M.P.No.41778 of 2003

A.V.M.Charities,
Rep. by Secretary A.V.M.Kumaran,
No.6, A.V.M.Avenue,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 4. ...Petitioner

Vs

1. The Assistant Commissioner (ULT),
Kunnathur, Madras - 600029.

2. The Special Thasildar (ULT),
Mambalam - Guindy Taluk,
Chennai - 600078. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the issue of impugned order No.C-267/85 dated 30.07.1985 on the file of the 1st respondent and the consequential demand notice dated 14.11.2003 of the 2nd respondent and quash the same and forbear the respondents 1 and 2 from assessing and recovering Urban Land Tax from the petitioner in respect of land comprised in survey numbers following:

Virugambakkam

R.S.No. 87	Avichi High School	0.42 cents
85/1	Avichi High School	2.96 acres
86/1	Avichi High School	2.55 acres
84/2	Avichi High School	1.03 acres
87/2	Avichi High School	1.77 acres
112/1A	Avichi High School	2.14 acres

Saligramam

157/2A 2B	Community Hall	3.0544

grounds

208/1A part	School Play Ground	0.23 cents
146/1	Health Centre	2.863 grounds

For Petitioner : Mr.C.Hanumantha Rao

For Respondents: Mr.A.Zakir Hussain, GA

O R D E R

The assessment order passed on 30.07.1985 assessing the petitioner's properties in R.S.Nos. 87 measuring 0.42 cents, 85/1 measuring 2.96 acres, 86/1 measuring 2.55 acres, 84/2 measuring 1.03 acres and 87/2 measuring 1.77 acres in Virugambakkam Village and R.S.Nos. 112/1A measuring 2.14 acres, 157/2A 2B measuring 3.0544 grounds, 208/1A part measuring 0.23 cents in Saligramam Village and the consequential demand notice dated 14.11.2003 calling for payment of the urban land tax arrears for the fasli years 1385 to 1400 are put under challenge in the present writ petition.

2. The main ground raised by the petitioner is that the petitioner is a Charitable Trust running schools in the subject lands, in which the petitioner does not derive any income from the buildings constructed therein.

3. According to the learned counsel for the petitioner, in view of Section 29(h) of the Tamil Nadu Urban Land Tax Act, these urban lands are exempted from paying the tax. The learned counsel also claims that the petitioner has been issued with an Income Tax Certificate exempting them from payment of income tax and in view of the same, the petitioner would entitled for exemption under Section 29(h) of the Act.

4. The learned Government Advocate, on the other hand, submitted that the petitioner has not approached the concerned jurisdictional authorities seeking for exemption under Section 29(h) of the Tamil Nadu Urban Land Tax Act and therefore, cannot claim exemption as a matter of right.

5. If the petitioner is running a school in the subject lands, as claimed by them, they would be entitled for exemption under Section 29(h) of the Urban Land Tax Act. Nevertheless, there is a duty cast on the petitioner to approach the concerned authorities with an application and establish the requirements under Section 29(h). Though the petitioner has claimed that they have made an application seeking for exemption under this provision,

the respondents are denying the same. However, by taking into account that the respondents have not chosen to demand the tax amount, which fell due in the year 1985 till 2003, it would be appropriate to give an opportunity to the petitioner to approach the authorities seeking for exemption with a consequential direction to the respondents to consider such an application.

6. By taking into account the delay on the part of the respondents in not enforcing the assessment made in the year 1985 till the year 2003, it would also be justifiable, if the assessment proceedings are kept in abeyance till the exemption application is considered.

7. In the light of the above observations, the petitioner herein is granted liberty to make an application under Section 29(h) of the Tamil Nadu Urban Land Tax Act before the concerned jurisdictional authority seeking for exemption under Section 29(h) or any other sub-section under Section 29, within a period of 30 days from the date of receipt of a copy of this order. The petitioner is also at liberty to produce the relevant supporting documents including the Income Tax Clearance Certificate obtained by them and any other Judgments touching upon the subject matter. On receipt of such an application, the respondents herein shall give due opportunity of personal hearing to the petitioner and pass final orders in accordance with law, within a period of 3 months from the date of the application. Till such final orders are passed in the exemption application, the impugned orders shall be kept in abeyance.

8. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Assistant Commissioner (ULT),
Kunnathur, Madras - 600029.

2. The Special Thasildar (ULT),
Mambalam - Guindy Taluk,Chennai - 600078.

+1cc to Mr.C.Hanumantha , Advocate SR.No. 72412

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A.SK(03/09/2019)