IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.25841 of 2004
& W.P.M.P.No.31403 of 2004

Masilamani Mudaliyar Thuluva Vellala Boys
Free Boarding Lodging & Education Fund,
Vellore.
Rep. By its present Managing Trustee
D.Gajaraj
Having office at No.17, Masilamani Mudaliyar
Hostel Road, Vellore.

...Petitioner

Vs

1. Secretary to Government of Tamil Nadu,
Urban Land Tax Department,
Secretariat, Chennai.

2. The Assistant Commissioner,
Urban Land Tax, Poonamallee, Chennai.

3. The Tahsildar,
Urban Land Tax - cum - Zonal Deputy Tahsildar,
Tahsildhar's Office, Vellore.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records from Revenue Department G.O. (Standing) No.126 dated 1.3.2000 from the file of the 1st respondent and quash the same, granting exemption of payment of Urban Land Tax to the vacant site, play ground and hostel charitable buildings constructed in Vellore T.S.No.318/1, 318/2 and 318/3 in Masilamani Mudaliyar, Hostel Road, Vellore and forbearing the 3rd respondent from collecting Urban Land Tax in pursuance of Revenue Recovery demand issued by the 3rd respondent for the Fasli year 1401 to 1414 under Revenue Recovery Notice R.N.R.No.541/91, R.N.R.No.542/91 and R.N.R.No.543/91.

For Petitioner : Ms.R.T.Sundary

For Respondents : Mr.Pratap Singh, G.A.

O R D E R

The petitioner runs, according to it, a free boarding and lodging facility along with playground in S.Nos.318/1, 318/2 and 318/3 at Vellore (land in question). The land in question forms part of a total extent of property bequeathed by one Masilamani Mudaliar to a Trust created in the name and style of 'Masilamani Mudaliar Thuluva Vellala Boys free boarding and lodging and Education fund'. Several properties had been endowed to the fund, out of which the properties in T.S.Nos.512/2C2, 577, 317/1 and 310 fetch income and are assessed to property tax and Urban Land Tax. Apart from the same, properties bearing T.S.No.318/1 ad measuring 10.1105 grounds, S.No.318/2 ad measuring 5.377 grounds and S.No.318/3 ad measuring 5.1103 grounds, in all admeasuring 20.5968 grounds, were ear-marked for charitable purposes. Nearly half of the aforesaid 20.5968 grounds, admeasuring 10 grounds had been left vacant for use as playground, where children can engage in outdoor activities including gardening.

2. In the remaining portion, six buildings have been constructed and are being utilised for boarding and lodging for poor, downtrodden and backward students who are below the poverty line belonging to the Thuluva Vellala Community and other backward classes. These are used exclusively, according to the petitioner, as hostels. Students are being admitted therein since 1917 and the boarding and lodging is entirely gratuitous. The expenditure is borne from out of the income derived from other properties that are admittedly being exploited commercially. At the time of filing of this Writ Petition, the petitioner has averred that the hostels housed 117 students of schools, colleges and trade courses, such as ITI and Polytechnic.

3.The first respondent appears to have issued notice to the Managing Trustee on 30.07.1993 calling for objections to the proposed assessment and fixing the enquiry on 18.08.1993. There was no response to the notice and no objections filed, either. It was thus that orders of assessment come to be passed assessing the properties in question to ULT.

4. The petitioner thereafter sought an exemption in terms of Section 29(h) of the Urban Land Tax Act, 1966 (in short 'ULT Act'), that reads as follows:

> 29. Exemptions........
>
> (h) any urban land used by schools, colleges or universities for purposes directly connected with education, but not including any urban land owned by such educational institutions and -
>
> (i) which is vacant, or
>
> (ii) in which buildings from which income is derived have been constructed.
>
> Explanation I - For the purposes of this clause, schools or colleges which are educational institutions recognised either by the Government or by any University, as the case may be.
>
> Explanation II - For the removal of doubts, it is hereby declared that the urban land on which schools, colleges or universities or staff quarters or hostels or other buildings used for the welfare of the students, have been constructed, or used as playgrounds attached to such schools, colleges or universities, shall be deemed to be urban land used for the purposes directly connected with education.'

5. The application for exemption was taken up for adjudication by the first respondent, the Secretary to Government, who at the stage of grant of interim orders, has opined vide order dated 22.07.1999 that, prima facie, the trust was eligible for the exemption sought, granting the petitioner a stay of collection pending disposal of the exemption application.

6. Upon perusal of the same, the respondents appear to have been of the view that the Trust had expended only an average of 5% of its net income towards its objectives and had substantial savings of more than Rs.8.00 lakhs. The savings when compared with the tax levied per Fasli year, which was only a sum of Rs.31,189/-, indicated that there was no hardship that was faced by the petitioner in paying the tax.

7. The application thus came to be rejected vide G.O.Ms.No.126 Revenue Department dated 01.03.2000, the reasoning being that the petitioner had not spent 90% of its net income towards its objects and that its savings exceeded 25% of the

total income after deduction of essential expenses. This is also the stand taken by the respondents to justify the impugned order in the counter.

8. Though the aforesaid conditions do not flow from the provisions of section 29 itself, G.O.Ms.No.1834 - Revenue Department - dated 29.10.1983 does impose a series of conditions for grant of exemption under the ULT Act including that the petitioner should have been recognised as a charitable institution in terms of the Income Tax Act, 1961 and the production of various documentation in support thereof.

9. Thus, the basis of the impugned order is that, firstly the Trust is run on commercial lines and as such does not satisfy the conditions set out in G.O.Ms.No.1834 of 1983 and secondly that the Trust enjoys substantial savings and would hardly face any hardship or prejudice by reason of such levy.

10. The contentions of the respondents are well taken. However, according to the petitioner, it has filed a consolidated statement of income and expenditure and what has come to the notice and attention of the first respondent is the income (consolidated) that has been earned by the petitioner in respect of all the institutions. The lands in question and playground appurtenant thereto are expressly stated to have been utilised, gratuitous.

11. If that were the case, then the petitioner is certainly entitled to the exemption sought in terms of section 29(h) of the Act. This however constitutes a question of fact, which has to be verified and confirmed only upon a separate set of financials being furnished by the petitioner and verification thereof being undertaken by the respondents to ascertain the veracity of the financial statements qua the usage of lands/property in question as averred by the petitioner.

12. The impugned order is set aside insofar as it has not undertaken an examination in this regard. Let this exercise be done within a period of six (6) weeks from the date of receipt of a copy of this order and orders de novo, be passed in the exemption application after hearing the petitioner and consideration of separate financials/any other evidence that may be produced by it.

13. The Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

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To

1. Secretary to Government of Tamil Nadu,
Urban Land Tax Department,
Secretariat, Chennai.

2. The Assistant Commissioner,
Urban Land Tax, Poonamallee, Chennai.

3. The Tahsildar,
Urban Land Tax - cum - Zonal Deputy Tahsildar,
Tahsildhar's Office, Vellore.

+1cc to Mr.R.Margabandhu, Advocate, SR.No.80524.
+1cc to Government Pleader, SR.No.81565.

W.P. No.25841 of 2004
& W.P.M.P.No.31403 of 2004

SVI (CO)
CSR(18/12/2019)