IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.28340 of 2005
and
W.P.M.P.No.30858 of 2005

St. George's Anglo Indian Hr. Sec
School & Orphanage,
No.738, Periyar EVR Salai,
Shenoy Nagar,
Chennai 600 030.
Rep. by its Secretary ...Petitioner

Vs

1. The State of Tamilnadu
Rep. by its Secretary to Government,
Revenue Department,
Fort St.George,
Chennai - 600 009.

2. The Assistant Commissioner,
(Urban Land Tax)
Tondiarpet - Egmore,
Egmore Zone,
248, E.V.R.Salai,
Chennai - 600 029. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the impugned proceedings of the 2nd respondent in dated 13.07.2005 in Ref.No.B/1013/2002 and quash the same.

For Petitioner : Mr.George Graham
for M/s.Devadason & Sagar

For Respondents: Mr.A.Zakir Hussain
Government Advocate

ORDER

The petitioner institution claims to possess lands measuring 378 grounds, out of which, except 15 grounds and 1950 sq.ft, the remaining urban land was exempted under Section 29 (h) of the Tamilnadu Urban Land Tax Act. Thereafter, when the petitioner had failed to submit the returns, the respondents had issued a show cause notice on 09.03.2005, proposing to levy urban land tax as well as penalty. The petitioner had given his objections to the show cause notice on 21.04.2005, claiming exemption for their entire land. Pursuant to the same, the impugned order dated 13.07.2005 has now been passed, levying urban land tax for the total extent of 362 grounds and 490 sq.ft. together with penalty. The said order of the second respondent herein is under challenge in the present writ petition.

2. The learned counsel for the petitioner submitted that out of the total extent of the urban land belonging to the petitioner, except an extent of 15 grounds and 1960 sq.ft, the remaining portion of the land have already been exempted and if at all the respondents were of the view that the urban land tax requires to be levied for the entire extent, the required form through which such a demand can be made is only under Form 7 and not under Form 4(c).

3. The learned counsel would also submit that earlier when the proposed levy was put under challenge by way of a writ petition in W.P.No.2098 of 1988, the High Court had held that except the portion of 15 grounds and 1960 sq.ft, the rest are liable to be exempted in view of Section 29 (h) and therefore, there is no justification on the part of the respondents to take a contrary view from the observations made. It is also his submission that the order has been passed under Section 16 of the Tamilnadu Urban Land Tax Act, which pertains to urban land tax escaping assessment and the provisions for cancellation of the earlier exemption granted has not been invoked and therefore, the impugned order is liable to be set aside.

4. The learned Government Advocate, by reiterating the averments made in the counter affidavit submitted that the authorities are empowered to cancel any exemption granted under Section 16 of Tamilnadu Urban Land Tax Act. Since the earlier assessment order for 15 grounds and 1960 sq.ft was cancelled, the second respondent was justified in passing a revised assessment order under the provisions of the Act. Submitting so, the learned Government Advocate sought for dismissal of the writ petition.

5. It is not in dispute that when the petitioner had earlier sought for exemption of the entire extent of 362 grounds and 490 sq.ft, barring an extent of 15 grounds and 1960 sq.ft, the remaining urban land of the petitioner came to be exempted under Section 29 (h) of Tamilnadu Urban Land Tax Act. The ground on which the exemption was denied was that the land was being utilized for commercial purposes. When the petitioner had

earlier challenged the act of the respondents in denying exemption for 15 grounds and 1960 sq.ft, this Court had rejected such a plea stating that just because the income derived from the utilization of this portion of the land for commercial purposes is being used for orphanage, will not entitle the petitioner to claim exemption for this portion also.

6. Insofar as the remaining portion, where exemption has been granted is concerned, as pointed out by the learned Government Advocate, Section 16 of the Tamilnadu Urban Land Tax Act empowers the authorities to reassess such urban land, if they have reasons to believe that such land has been wrongly or incorrectly assessed for any fasli year. As such, it cannot be said that the authorities are not empowered to reassess such portions of land to which exemptions have already been granted.

7. Insofar as the impugned order is concerned, prior to the issuance of the same, the second respondent herein had chosen to issue a notice under Form 4(c), which pertains to notice under Section 11(1), which provides for a procedure in cases where no returns were filed.

8. The case of the respondents seems to be one of reassessment of urban land, where a larger portion has already been exempted. As stated earlier, Section 16 of the Act empowers the authorities to reassess such urban land tax. Rule 6 of the Tamilnadu Urban Land Tax Rules provides that for such reassessment, a notice in Form 7 is required to be served on the assessee.

9. In the present case, the respondents have chosen to send a notice under Form 4(c), which is apparently an incorrect Form. Failure to furnish returns is distinct from an action to reassess the urban lands, which have been wrongly or incorrectly assessed. As such, the proceedings itself would vary during the course of enquiry pursuant to such prior notice. While that being so, the wrong quoting of provision or sending notice through a wrong Form, gains significance.

10. In my view, the notice proceeding the impugned order itself is illegal and therefore, the consequential order demanding urban land tax along with penalty cannot be sustained. Nevertheless, now that the respondents are of the view that the entire land requires to be reassessed for the purpose of levy of urban land tax and penalty, if any, it would be appropriate to afford them an opportunity to rework the entire procedure adopted in accordance with the provisions of the Tamilnadu Urban Land Tax as well as the Rules made therein, in the light of the observations made in this order.

11. For all the reasons stated above, the order of the second respondent in Ref.No.B/1013/2002 dated 13.07.2005, is set aside. Consequently, the matter is remanded back to the second respondent for reconsideration. The second respondent shall strictly adhere to the procedure contemplated under the Tamilnadu Urban Land Tax Act as well as the Rules for the purpose of reassessing the petitioner's land in SF.No.232, Egmore Village. After giving proper prior notice to the petiti;oner and affording them an opportunity of personal hearing, the second respondent shall endeavor to complete such an exercise as expeditiously as possible, in any event, within a period of six months from the date of receipt of a copy of this order. Before such an exercise is commenced, the petitioner shall make a representative request, enclosing a copy of this order to the second respondent, within a period of 10 days from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands disposed of. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vum/hvk

To

1. The Secretary to Government,
   Revenue Department,
   Fort St.George,
   Chennai - 600 009.

2. The Assistant Commissioner,
   (Urban Land Tax)
   Tondiarpet - Egmore,
   Egmore Zone, 248, E.V.R.Salai,
   Chennai - 600 029.

+1cc to Mr.Devadasan & Sagar, Advocate, S.R.No. 50439
+1cc to the Government Pleader, S.R.No. 51187

W.P.No.28340 of 2005 and
W.P.M.P.No.30858 of 2005

GJ II(CO)
GN(05/08/2019)