IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NOS.26652 & 26653 OF 2011
AND
M.P.NOS.1 & 2 OF 2011

Sri Aravindar Vidhyalaya Matriculation School,
Akasmpet Village Panchayat,
Vanur Panchayat Union,
No.92/2, Pony-Mailam Road,
Sedarapet P.O., Vanur Tk,
Villupuram District - 605 111.
..Petitioner in W.P.No.26652/2011

P.M.P.Arts & Science College,
Rep.by its Correspondent & Secretary,
Thadangam Village, Thokkampatty,
Dharmapuri - 636 705. ..Petitioner in W.P.No.26653/2011

Vs.

1. The State of Tamil Nadu,
   represented by its secretary to Government,
   Rural Development and Panchayat Raj Department,
   Fort St.George, Secretariat,
   Chennai- 600 009.

2. The Director of Rural Development and
   Government of Tamil Nadu,
   Chennai - 600 015.
.. 1 & 2 Respondents in both the WPs

3. Akasmpet Village Panchayat,
   Rep.by Its President,
   Vanur Panchayat Union, Vanur Taluk,
   Villupuram District-605 111.

.. 3rd Respondent in WP.No.26652 of 2011

4. Thadangam Panchayat, Rep.by its President,
   Nallampalli Panchayat Union,
   Dharmapuri District.
..3rd Respondents in WP.No.26653 of 2011

PRAYER in W.P.No.26652 of 2011 :

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the respondents relating to the order of the 1st respondent in G.O.Ms.No.38, Rural Development and Panchayat Raj, dated 05.03.2008 and published at page 1 of Extra-Ordinary issue of Part III Section 1(a) of Tamil Nadu Government Gazette No.69 dated 05.03.2008 introducing amendment to Rule 15 of Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules 1999 and the Demand Notices dated 22.08.2011 for 2008-09, 2009-10 and reminder letter Na.Ka.No.916/2011 dated 09.06.2011 & Demand Notice dated 01.02.2011 for year 2010-2011 bearing Assessment Nos.102 issued by the 3rd respondent and quash the same in so far as they relate to the petitioner institution.

PRAYER in W.P.No.26653 of 2011 :

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the respondents relating to the order of the 1st respondent in G.O.Ms.No.38, Rural Development and Panchayat Raj, dated 05.03.2008 and published at page 1 of Extra-Ordinary issue of Part III Section 1(a) of Tamil Nadu Government Gazette No.69 dated 05.03.2008 introducing amendment to Rule 15 of Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules 1999 and the Demand Notice dated 24.06.2011 enclosed with Office Letter No.4/Ta.Pa./2011-2012, issued by the 3rd respondent, received by the petitioner on 19.07.2011, and quash the same in so far as they relate to the petitioner institution.

For Petitioners: Mr.Puran Khemka

For Respondents: Mr.A.Zakir Hussain
Government Advocate for R1 & R2
No Appearance for R3
..in both WPs.

COMMON ORDER

It is relevant to extract the order made in W.P.Nos.6223 to 6225 of 2011 dated 23.11.2017 passed by this Court, as follows:

> "The petitioners, which are Educational Institutions, have filed these Writ Petitions, challenging the amendment to Rule 15 of Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999, and the consequential demand notices.
>
> 2.The learned counsel appearing for the petitioners would submit that, identical Writ Petitions were heard by

the learned Single Judge and they were dismissed, as against which, the Writ Appeals have been preferred before the Hon'ble Division Bench (in which, I was a party), and batch cases are pending. In the said batch case, interim order has been passed, wherein, a direction has been issued to the respective Educational Institutions to pay the property tax, with effect of 05.03.2008, the date when the amended Rule came into force. Since the cases on hand are also identical, the petitioners should essentially also be put on the said condition. For better appreciation, the order passed by the Hon'ble Division Bench in W.A.No.2152 of 2010, etc.(batch) dated 06.07.2011 is quoted herein below:-

" " 2.For better appreciation, the order dated 17th June, 2011 is quoted herein below:-

" 1. Reference may be made to the order dated 17th March, 2011 which reads as under:-

"We have heard Mr.A.K.Ganguli, learned senior counsel Mr.P.S.Raman, learned Advocate General and Mr.N.R.Chandran, learned Senior Counsel at length.

2.Mr.N.R.Chandran, learned senior counsel needs further hearing in all theh matters. As jointly agreed, put up all these cases on 13th June, 2011.

3.In the meantime, the appellants as also the Writ Petitioners shall pay property tax with effect from 05fth March, 2008, the date when the amended Rule came into force. Consequently, the interim order passed in the writ petitions stands modified. Needless to say that in the event the appellants or the writ petitioners succeed, the amount that may be deposited shall be adjusted."

2.Before 17.03.2011, this batch of cases was listed on several dates. But the appellants and the writ petitioners took adjournment on one pretext or the other. On being questioned, the learned counsel appearing for the appellants and the writ petitioners submitted that the aforesaid order has not been complied with inasmuch as the property tax, as directed by this Court, has not been deposited.

3.Today, the learned counsel for the appellants prays for adjournment of the case on the ground of absence of the Senior Counsel.

4.Taking into consideration, the aforesaid facts, all these writ appeals and writ petitions stand dismissed. Consequently, the connected miscellaneous petitions are also dismissed. However, there will be no order as to costs."

3.Mr.A.K.Ganguli, the learned senior counsel appearing for the petitioners produced before us a list of 20 Institutions and submitted that out of the said 20 Institutions, 8 of them have deposited tax before 17th June, 2011 and 12 have deposited tax after 17th June, 2011. Accepting the correctness of the submission made by Mr.A.K.Ganguli that all the 20 Institutions named in the list have deposited the property tax in compliance of the order of this Court, these miscellaneous petitions are allowed and the order dated 17th June, 2011 passed in so far as the above mentioned writ appeal and writ petitions is recalled, and the writ appeal and writ petitions is recalled, and the writ appeal and writ petitions are restored to its original files.

4.It is made clear that if, on the next date of hearing of the matters, it is brought to our notice by the learned Advocate General that some of the Institutions mentioned in the list have not deposited the tax, then the order passed today shall stand recalled." "

3.The learned counsel appearing for the petitioners would further submit that, apart from claiming property tax, as per the amended Rule, surcharge is also being levied.

4.In fact, this Court had an occasion to consider a similar plea in the case of Kaavery Educational Trust, rep. by the Correspondent, Salem Vs.The Govt. of Tamil Nadu and another in W.P.Nos.8160, 3036 etc, of 2016(batch) and the Writ Petitions were disposed of by order, dated 20.06.2016. The operative portion of the said order is as follows:-

"5. The respondents have furnished a tabulated statement, from which, it is seen that they have calculated surcharge at 60% of the property tax, which had been done relying upon Table 2 in Schedule 1 of the Act. The issue would be as to whether at this juncture, the respondents-Panchayats would be entitled to demand surcharge. Section 172 of the Act deals with the levy of house tax and the procedure for levying house tax. So far as the levy of surcharge is concerned, the only provision which refers to the same is Section 168 which speaks of local cess surcharge. The said provision has been omitted by virtue of Tamil Nadu Panchayats (Amendment Act, 2009 - with effect from 06.08.2009). The learned counsel appearing for the respondents have not referred to any other statutory provision by which surcharge is leviable at flat rate, as in the instant case, 60% of the property tax has been levied as surcharge. Surcharge has been defined under various taxation statutes, as a penal levy and the penal levy is on account of non-payment of taxes or on account of belated payment of taxes. This Court, prima facie is of the view that by referring to the Explanation in Schedule 1 of the Act, the respondents are not justified in demanding surcharge at flat rate of 60%. However, this issue is left open to be decided later on, since the larger issue as to whether the petitioners-institutions are entitled for exemption from property tax, is pending consideration before the Division Bench of this Court. That apart, certain Institutions have also approached the Hon'ble Supreme Court as against the dismissal of their cases and the Hon'ble Supreme Court in Special Leave Petition No.20031 of 2012, which had been filed against the order in Writ Appeal against the judgment dated 20.10.2010 in W.A.No.505 of 2007, has granted leave.

6.In the light of the above, the petitioners-institutions shall continue to pay the property tax in terms of the interim order granted by the Division Bench of this Court in W.A.No.2152 of 2010, etc. batch, dated 17.03.2011 and also pay the library cess which is levied at 1% of the property tax upto date. So far as the surcharge is concerned, it appears that the petitioners have effected part-payments. Therefore, whatever payments which have been made towards surcharge, need not be refunded at this juncture, nor it is required to be adjusted as of now. The respondent-Panchayats shall not levy any surcharge and they shall await the decision of the Hon'ble Division Bench of this Court or the Hon'ble Supreme Court whichever is earlier, where the larger issue as to whether the petitioner-institutions are entitled for the benefit of exemption, is pending consideration.

7.The learned Counsel for the petitioners submitted that the petitioner-institutions have been regularly remitting the property tax and for instance, with regard to Kaaveri Educational Trust (petitioner in W.P.No.8160 of 2016), they have paid property tax from the assessment year 2013-2014, and the property tax has been abruptly increased from Rs.4,64,325/- to Rs.13,74,305/-.

8.In the light of the above, the petitioner-institutions are at liberty to challenge the increase of property tax by availing remedies available under the provisions of the Act and this can be done by the petitioners without prejudice to the rights in the pending Writ Petitions as well as Appeals, wherein the larger issue with regard to levy of property tax is put to challenge. In the light of the above, the respondents are directed to issue a revised demand giving break-up details. The above direction shall be complied with by the respondent-panchayats, within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the petitioners should be granted reasonable time to comply with the revised demand of property tax. With the above direction, these Writ Petitions stand disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed".

5. In the light of the above, the petitioners are directed to pay the property tax with effect from 05.03.2008, and continue to remit the same till the Writ Petitions are heard and disposed of. With regard to surcharge passed, the same shall be paid pursuant to the demand, which shall be raised by the third respondent in terms of the direction issued in Kaavery Education Trust (supra)."

2.Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pns

To

1. The Secretary to Government,
   State of Tamil Nadu,
   Rural Development and Panchayat Raj Department,
   Fort St.George, Secretariat,
   Chennai- 600 009.

2. The Director of Rural Development and
   Government of Tamil Nadu,
   Chennai - 600 015.

3. The President,
   Thadangam Panchayat,
   Nallampalli Panchayat Union,
   Dharmapuri District.

4. The President,
   Akasampet Village Panchayat,
   Vanur Panchayat Union,
   Vanur Taluk, Villupuram District-605 111.

+1cc to Mr.K.Shakespeare, Advocate, S.R.No.70890
+1cc to the Government Pleader, S.R.No.71198

W.P.Nos.26652 & 26653 of 2011
and
M.P.Nos. 1 & 2 of 2011

MP(CO)
CS/21/01/2020