IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.24018 of 2012
and
M.P.No.2 of 2012

The Correspondent
St. Mary's Matric. Higher Secondary School,
Kuruppanaikenpalayam,
Bhavani – 638 302
Erode District. ... Petitioner

Vs.

1.The Director of Rural Development &
Local Administration,
Panagal Building, Saidapet,
Chennai – 600 015.

2.The Block Development Officer,
(Village Panchayat)
Bhavani, Erode District.

3.The Panchayat President,
Kuruppanaikenpalayam Panchayat,
Bhavani, Erode District. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records relating to the impugned Notice No.1699 dated 06.03.2012 issued by the 3rd respondent Panchayat President (demanding revised tax retrospectively from 2008-2009 onwards in respect of the petitioner's school-buildings bearing No.III/431, Mettur Main Road, Kuruppanaickampalayam, Bhavani, Erode District), quash the same.

For Petitioner : Mr.P.Godson Swaminath

For Respondents : Mr.Prathap Singh (for R1 & R3)
Government Advocate

Mr.P.S.Sivashanmuga Sundaram (for R2)
Special Government Pleader

ORDER

The petitioner is a private school housing 369 students and employing 30 teachers and 10 non-teaching staff. The school conducts classes from the level of Lower Kindergarden to 12^{th} Standard and states that it is fully self financed. The present writ petition is filed challenging a final demand calling upon it to remit tax under the Tamil Nadu Panchayats Act, 1994 (in short Act) for the periods 2008-2009 to 2011-2012 of an amount of Rs.3,22,000/-.

2.The petitioner has raised several contentions challenging the impugned levy. To cut to the chase, Mr.Godson, learned counsel for the petitioner, does not dispute the applicability of the Act to the assessments of the petitioner. He fairly points out that a challenge to Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment & Collection of Taxes) Rules, 1999 that brought buildings used for educational purposes including guest house and libraries run by the Government or local bodies and institutions aided by the Government and public buildings used for charitable purpose of sheltering the destitute within the ambit of house tax, has been rejected by this Court.

3.There is thus no dispute upon the position that the petitioner before me is liable to be assessed to house tax.

4.That apart, learned counsel had alleged that no mandatory panchayat Resolution levying such tax, had been passed. Records were directed to be produced, upon perusal of which it is clear that the Panchayat has passed the requisite Resolution in this matter directing assessment of the petitioner to house tax. Thus, the sole question that remains is whether the determination of the house tax has been done in a manner that is proper and in line with the statutory provisions and connected Rules.

5.Explanation II to the First schedule to the Act, categorises buildings for the purpose of levy of house tax. The tax levied per square foot p.a. is an amount of one rupee. The extent of area in the present case is Rs.47,926/-, and thus the amount of house tax payable is a sum of Rs.47,926/- per annum. The challenge before me is to the levy of surcharge thereupon. According to the petitioner, the school falls within the category of serial No.1, i.e. 'residential', I disagree. If at all there could be any dispute in the matter, it would be as regards the determination as to whether the petitioner is a 'simple commercial entity' or 'largely commercial entity'. Explanation-II is extracted hereunder for the sake of clarity:

"Explanation II. - The use of the building may be classified and surcharge shall be levied on the levy of house-tax at the rates specified below:-

Sl.No.	Class of usage.		Rate of surcharge.
(i)	Purely residential.	Village Panchayats.	Nil.
(ii)	Simple commercial like petty shops and other small commercial establishments.	Village Panchayats.	20%
(iii)	Largely commercial, industrial and business establishments, Cinema theatres, Hostels, Lodges, etc.	Village Panchayats.	60%

Provided that in respect of buildings used partly as residential and partly as commercial, industrial, etc., purposes, the rate of surcharge applicable to the respective categories as above shall be applicable for the portions covered by each class of usage:"

6.A determination of the specific category is necessary in order to fix the rate of applicable surcharge and this, admittedly has not been done in this case. Mr.Pratap Singh, learned Government Advocate appearing for respondents 1 and 3 points out that the petitioner has undertaken to pay the demand. This would not stand in the light of the petitioner challenging the demand, if it is otherwise seen to be contrary to the statutory provisions. The petitioner shall appear before the Block Development Officer/2nd respondent on Wednesday, the 23rd of October, 2019 at 10.30 a.m. with all records to establish whether it falls within the sweep of serial No.2 or 3 of Explanation II as above. No further notice need be issued in this regard.

7.On account of an order of interim stay granted by this Court on 11.09.2012, there has been no tax remitted by the petitioner from 2008-2009 till date. The computation of arrears now circulated shows that the total arrears for the aforesaid periods amount to Rs.9,21,076/-, the break-up per year being Rs.47,926/- towards tax, Rs.28,756/- towards 60% surcharge, and Rs.7,668/- towards library tax, per annum. The petitioner shall remit a sum of Rs.5,00,000/- towards the tax arrears for the periods 2008-2009 till date prior to the date fixed above for hearing. The Block Development Officer shall verify compliance with the condition imposed prior to hearing the matters on merits and pass orders, after hearing the petitioner and in accordance with law, within a period of four weeks from date of conclusion of personal hearing.

8.This writ petition is disposed in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.
vs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Director of Rural Development &
Local Administration,
Panagal Building, Saidapet,
Chennai - 600 015.

2.The Block Development Officer,
(Village Panchayat)

3. The Panchayat President,
Kuruppanaikenpalayam Panchayat,
Bhavani, Erode District.

+1cc to Mr.P.S.Sivashanmugasundaram, Advocate, SR.No.84354
+1cc to Mr.P.Godson Swaminath, Advocate, SR.No.84831
+1cc to the Govt.Pleader, Vide Sr.No.85072

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and
M.P.No.2 of 2012

Kak(17/10/2019)