IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.09.2019
CORAM:
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P.No.428 of 2011
and
M.P.No.1 of 2011

PSG Sons Charities
Represented by its Chief Executive
Avinashi Road,
Peelamedu,
Coimbatore. ... Petitioner

Vs.

Coimbatore City Municipal Corporation,
Represented by its Assistant Commissioner,
Coimbatore. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records of the respondent Corporation dated 04.01.2011 in Na.Ka.No.13190/92 KC 4 and quash the said demand dated 04.01.2011.

For Petitioner : Mr.J.Abishek Jenasenan
For Respondent : Mr.R.Sivakumar
Standing counsel

O R D E R

The petitioner is a Trust that has been constituted under a scheme of Administration framed in O.S.No.135 of 1945. According to Mr.Abishek Jenasenan, who appears on behalf of the petitioner, the Trust has established several educational institutions and is running the same consistently since 1926. Since 1985, the Trust also manages a teaching Medical College along with a hospital. Both the college as well as the hospital are housed in the same premises as the hostel and other administrative buildings.

2.The petitioner has, admittedly not remitted any property tax in relation to either the educational institutions or the hospital or any other connected building, till date. The writ petition challenges demand notices of property tax for the periods 1989-1990 (I) to 2010-2011 (II) and vacant land tax for the periods 1984-1985 (I) to 1986-1987 (I) and 1988-1989 (I) and (II) and may be bifurcated into two periods, 1989-1990 (I) to 1991-1992 (I) (first period) and thereafter (second period).

3. As regards the first period, a writ petition had been earlier filed challenging demand notices of property tax that had come to be decided by a learned Single Judge of this Court holding that the petitioner was entitled to exemption sought in terms of Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981 (in short Act). As regards the aspect of limitation agitated by the petitioner, the learned Single Judge expresses the view that the demand was to be limited only to the period set out under Section 168 which was three years (at that relevant point of time). As against the aforesaid order, a Writ Appeal was filed by the Corporation that came to be decided on 09.01.2003, in the absence of both the parties. The decision of the Division Bench is as follows:

> 'These writ appeals are directed against the order of the learned single Judge in W.P.Nos.13190 to 13194 of 1992 dated 04.09.1996 quashing the property tax demand notices.
>
> 2. The respondent / petitioner in all the writ appeals were served with a notice of levy of demand of property tax for the structures constructed on it. The claim of the respondent / petitioner was that the structures being used for the charitable purposes are exempted from tax in consonance with Section 127 of the Coimbatore City Municipal Corporation Act. They also claimed that in any event, there cannot be any demand for the period exceeding three years as it is barred by limitation under Section 168 of the Coimbatore City Municipal Corporation Act.
>
> 3. There is a factual dispute as to whether the structures are being used for charitable purposes or not. In fact, the appellant / respondent questioned the maintainability of the writ petition on both the grounds of there being serious factual disputes and also availability of effective alternative remedy by way of an appeal.
>
> 4. The facts as stated are not admitted and when there are serious disputes regarding the facts, it was not proper for the learned single Judge to accept the case set up by the respondent / petitioner. Even with regard to limitation, it is for the appellate authority to decide as to whether it was time barred and such matters are better left to the appellate authority as the factual matrix is necessary for any legal principles to apply.
>
> 5. In the circumstances, these writ appeals are allowed, setting aside the order of the learned single Judge. We make it clear that if the respondent / petitioner wants to avail the alternative remedy,

> they can do so by filing appropriate appeals within a period of 30 days from the date of receipt of a copy of this order.
>
> 6. These writ appeals are ordered accordingly. No costs. Consequently, the connected C.M.P.Nos.12342 to 12346 of 1999 are closed.'

4.Admittedly, the opportunity extended by the Bench, permitting the petitioner to approach the appellate authority within 30 days from date of receipt of the order in writ appeal, has not been availed by the petitioner and no appeal has been filed till date. The petitioner has instead filed a petition seeking review of the aforesaid order in R.A.Nos.46 to 50 of 2003. The reviews are pending till date.

5.As far as the second period is concerned, a counter has been filed by the respondents reiterating the stand argued before me to the effect that the petitioner is not entitled to exemption as claimed. I do not propose to delve into the question of eligibility or otherwise to the exemption, as a decision on this matter involves the appreciation of facts that would have to be first ascertained by the concerned authority. Had the petitioner availed the opportunity to approach the Taxation Tribunal as permitted by the Division Bench, this Court would have had the benefit of the factual findings in regard to eligibility of the petitioner to claim exemption, or otherwise. However this has not been done, and thus it is incumbant upon the authorities to embark upon a determination of this issue at the threshold, even prior to raising a demand.

6.As far as the initial demand is concerned, though neither of the counsels before me are in a position to confirm whether the assessment was made after consideration of the claim of the petitioner for exemption under Section 127(e) of the Act, paragraph-7 of the order of the learned Single Judge order sets forth the narration of facts as follows:

> '7.The respondent Corporation had not levied any tax with reference to the buildings belonging to the petitioner Trust. While so, the petitioner was asked to receive notices purporting to be under section 168 of the Coimbatore Municipal Corporation Act levying property tax in respect of buildings used for the Medical college and Hospitals with effect from 1.4.1984. On receipt of the said special notices, the petitioner addressed a communication on 6.5.1992 to the respondent Corporation bringing to the notice that the property used for housing the PSG Hospitals are entitled to exemption under Section 123 of Coimbatore Municipal Corporation Act. He has also pointed out that the assessment made by the respondent with

reference to the buildings used for Medical College and Hospital appears to have been made at par with commercial buildings in the City which was solely unsustainable. A reply was received from the respondent on 28.5.1992 stating that if the petitioner is aggrieved by the levy of property tax they could challenge the same by way of appeal before the Tribunal after paying the tax in question. Following the said communication the respondent Corporation has also sent demands demanding the property tax in respect of the buildings used for the Medical College and Hospitals'

7. What appears to have transpired is that special notices for assessment were issued, pursuant to which the petitioner wrote to the Corporation on 06.05.1992 seeking an exemption from the levy of tax. By letter dated 28.05.1992, the Corporation then intimated the petitioner that if it was aggrieved by such levy, the demand could be challenged by way of appeal before the Tribunal, after making the appropriate pre-deposit of the taxes. It is as against those demands that the earlier writ petitions had been filed. Thus, it is apparant that there has been no application of mind by the respondents till date to the eligibility or otherwise to exemption claimed by the petitioner.

8. As regards the demands impugned before me, the learned counsel for the Corporation rightly states that these are simply based on the earlier special notices and consequent demands. However there has been a material change to the law thereafter, and section 123 of the Act, dealing with General Exemptions for property tax, as on date, reads as follows:

'123. General exemption from property tax

The following buildings and lands shall be exempt from the property tax -

....

....

(c) [Buildings used for educational purpose including hostels attached thereto and places used for the charitable purpose] of sheltering the destitute or animals, and orphanages, homes and schools for the deaf and dumb, asylum for the aged and fallen women and such similar institutions run purely on philanthropic lines as are approved by the council;

....

(e) charitable hospitals and dispensaries but not including residential quarters attached thereto;'

9. The exemption has been extended to buildings used for educational purposes including hostels, previously unavailable. Thus, I direct the respondents to initiate and finalize the assessments of the petitioner to levy of property tax under the Act de novo, deciding as a preliminary issue, the entitlement or otherwise of the petitioner to exemption in terms of Section 123 (c) of the Act.

10. In deciding the question of eligibility, the respondent will bear in mind that the term used in Section 123(c) is 'Educational Purpose'. All educational institutions, therefore would not be automatically entitled for exemption under Section 123 (C) unless they satisfy the test of 'being used for education purpose.'

11. I may also clarify at this juncture that the reference to 'approval' in Section 123(c) will only impact the last limb of buildings enumerated under sub-clause (c) which is 'such similar institutions run purely on philanthropic lines'. As far as other buildings are concerned, i.e. buildings used for educational purpose including hostels, places used for the charitable purpose, shelters for destitute or animals, and orphanages, homes and schools for the deaf and dumb and asylum for the aged and fallen women, the assessing authority is only required to ensure that the buildings are deployed for the stated purposes.

12. In the light of the discussion as above, the impugned demands are set aside and the following directions issued, to be scrupulously followed by the petitioner and respondent:

'(i) The demands under special notices dated 24.09.1992 in assessment Nos.9029, 9030, 9031, 9814 and 9815 amounting in toto to a sum of Rs.65,52,311/- shall be remitted by the petitioner within a period of two weeks from date of receipt of a copy of this order.

(ii) The respondent shall supply the basis of assessment to the petitioner within a period of two weeks from date of receipt of a copy of this order and the Petitioner shall, within two weeks from date of receipt thereof, file its objections to the proposed assessment.

(iii) The respondent shall hear the petitioner, on notice, both on the question of exemption sought under Section 123 (c) of the Act as well as the proposed basis of assessment, and orders shall be passed within four weeks from date of conclusion of personal hearing, in accordance with law.

13. Needless to say, this order is subject to any order passed by the Division Bench in Review Application Nos.46 to 50 of 2003.

14. These writ petitions are disposed in the aforesaid terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore.

+1cc to Mr.R.Sivakumar, Advocate sr.82125
+2cc to Mr.A.Jenasenan, Advocate sr.81738

W.P.No.428 of 2011
and
M.P.No.1 of 2011

nrl(co)
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