IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 26007 of 2011
and
M.P. No. 1 of 2011

Arulmighu Pachiamman Temple
Represented by its Executive Officer,
Anna Salai, Chennai - 600 002. ... Petitioner

Vs

1. The State of Tamil nadu
Represented by its Commissioner,
Land Reforms,
Chepauk, Chennai - 600 005.

2. The Special Tahsildar,
Urban Land Tax,
Egmore-Nungambakkam Taluk,
Mayor Ramanathan Street,
Chetpet, Chennai - 600 031. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the First Respondent made in his proceedings No.RC.No.1906/2001/B2 dated 25.04.2011, quash the same and forbear the Second Respondent from in any manner proceeding with recovery proceedings.

For Petitioner : Mr. A.K. Sriram
for Mr. A.S. Kailasam

For Respondents : Mr. A. Kumar
Additional Advocate General
Assisted by Mr. R.P. Prathap Singh
Government Advocate

ORDER

This writ petition has been filed by the Petitioner seeking for the issuance of Writ of Certiorarified Mandamus to call for the records of the First Respondent in proceedings

No.RC.No.1906/2001/B2 dated 25.04.2011, quash the same and forbear the Second Respondent from in any manner proceeding with recovery proceedings.

2. The Petitioner has challenged the impugned order passed by the First Respondent on 25.04.2011 purportedly passed in compliance of the order dated 16.04.2001 of the Division Bench of this Court in W.A. No. 1993 of 2000.

3. The operative portion of the said Order which is relevant of the present case reads as under:-

> "4. According to the learned counsel appearing for the appellant, this was not correct and as there was no question of the petitioner challenging any assessment order for the simple reason that the petitioner kept on enjoying the exemption granted wayback in the year 1981 under Section 27 from the total application of the Act. Learned counsel for the appellant points out that at no point of time has this exemption been called off or cancelled. He also points out that under Section 27 of the Act if any such exemption has to be cancelled, it cannot be done unless a reasonable opportunity for making representation is given to the party who enjoys the exemption under Section 27 of the Act. He also submits that there is no such notice till now, sent for cancelling the said exemption under Section 27 of the Act.
>
> 5. Learned counsel for the respondents also very fairly admitted that the exemption order passed in the year 1981 to which we have referred earlier, has not so far been cancelled. If this is the situation, then there was no question of the department holding any enquiry and proceed with the assessment notice dated 3.3.2000. Realising this, learned counsel for the department makes a statement that the department do not propose to proceed with the said notice and they would take further action only within the four corners of the Act. On this statement, it is unnecessary for us to proceed with the appeal. As the petitioner is aggrieved by only the distraint notice, we clarify that whatever further action has to be taken by the department, it may be taken only after giving a proper notice to the petitioner.
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> 6. With the above observation, we dispose of the appeal in the light of the statement made by

the respondents' counsel. Consequently, the connected C.M.P is closed. Needless to state that in view of the statement made, it will not be necessary to set aside the Judgment of the learned single Judge, as the matter itself would become infructuous because of the assuance given by the learned counsel appearing on behalf of the department."

Though the said order was passed on 16.04.2001, the First Respondent issued notice on 25.04.2011 pursuant to which the impugned order has been passed. In the operative portion of the order reads as under:-

"7. According to the directions of Hon'ble High Court of Madras in W.A. No. 1993/2001, dated 16.4.2001, the petitioner was given opportunity of being heard on 11.10.2010 and 1.11.2010. The petitioner appeared on 1.11.2010 and filed audited accounts for faslis 1416 to 1418 in respect of the petitioner's Temple.

8. This case has been examined with the report of the Assistant Commissioner (Urban Land Tax) Egmore, with that of norms specified in G.O.Ms. No. 1834/Revenue, dated 29.10.83.

i) The petitioner Temple is under the control of Hindu Religious and Charitable Endowment Department.

ii) 12A(a) of Income Tax Certificate has not been filed.

iii) The scrutiny of audited accounts show that the Temple has spent only 26% towards its objects instead of 90% specified in the Government order 1834/Revenue, dated 29.10.83.

9. As per the report of the Assistant Commissioner (Urban Land Tax), Egmore and also from the Encumbrance Certificate filed by the petitioner Temple, the Temple has sold portion of extent of 0600 Sq.ft., 2.0138 ¾ Sq.ft., through Doct. No. 246/84 and 631/1993 respectively in the S. No. 9/1 of Nungambakkam village. It is evident that the Temple has sold a portion of the lands owned by it. This is violation of principle of the Act and the Temple does not fulfill the norms stipulated in G.O.Ms. No. 1834/Revenue, dated 29.10.83 and not qualified for the exemption from payment of Urban Land Tax.

10. In view of the above facts, the Assessment orders issued by the Assistant Commissioner (Urban Land Tax), Egmore in respect of S. Nos. 9/1, 9/3, 9/5, 9/7, 9/8 of Nungambakkam village is hereby upheld."

4. The case of the Respondents appears to be that the Petitioner has violated the terms and conditions of G.O.Ms. No. 1834 dated 29.10.1983. It is the contention of the learned counsel for the Petitioner that the said Government Order is inapplicable to the Petitioner as the Petitioner is specifically governed by an Exemption Notification dated 29.08.1981. It is further submitted that G.O.Ms.No. 1834 dated 29.10.1983 pertains to the guidelines for the issue of exemptions prospectively and not to the exemptions that were already granted.

5. According to the Petitioner, the exemption dated 29.08.1981 is still in force and has not been withdrawn as has been also admitted by the Respondent in W.A. No. 1993 of 2000.

6. On the other hand defending the impugned Order, it is stated that the Petitioner has not only sold the land but has also not utilized the income for the institution and as thus violated the conditions of exemption as found by the First Respondent on 29.08.1981.

7. I have heard the learned counsel for the Petitioner and the learned Additional Advocate General for the Respondents.

8. The demand has been confirmed by the Respondents without issuance of proper notice to the Petitioner. Since the factual aspects have been discussed for the first time in the affidavit and counter affidavit, I am of the view it would be ideal if the case is remitted back to the Respondents to pass fresh order by treating the impugned order dated 25.04.2011 as a Show Cause Notice. If necessary the Respondents may issue a corrigendum to the Petitioner capturing the reasons for proceeding against the Petitioner within a period of thirty days from the date of receipt of a copy of this order.

9. The Petitioner may file its reply thereafter within a period of four weeks. The Respondents shall thereafter take up the case and dispose the same in accordance with law within a period of three months from the date of receipt of a copy of this order. It is needless to state that the Petitioner shall be heard before any orders have been passed.

10. The Writ Petition stands disposed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner,
Government of Tamil nadu,
Land Reforms,
Chepauk, Chennai - 600 005.

2. The Special Tahsildar,
Urban Land Tax,
Egmore-Nungambakkam Taluk,
Mayor Ramanathan Street,
Chetpet, Chennai - 600 031.

+1cc to M/s.A.S.Kailasam Associates Sr.9300
+1cc to the Government Pleader Sr.10008

W.P. No. 26007 of 2011
and
M.P. No. 1 of 2011

rsv[co]
srg 13/03/2020