IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

W.A.No.1746 of 2011
AND
M.P.Nos.1 and 2 of 2011

Tamil Nadu Nursery, Primary
Matriculation and Higher Secondary
Schools Managements Association
rep. by its General Secretary
Mr.D.Christdass,
Old No.64, New No.122,
T.P.Koil Street, Triplicane,
Chennai-600 005. ...Appellant / Petitioner

vs

1.The State of Tamil Nadu
rep. by its Secretary to Government,
Rural Development and Panchayat Raj
(PR-1) Department,
Fort St. George, Chennai-600 009.

2.The Director of Rural Development,
Government of Tamil Nadu,
Chennai. ...Respondents / Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order of the learned Single Judge made in W.P.No.5757 of 2009 dated 30.07.2010.

Prayer in W.P.No.5757 of 2009 : Writ Petition filed under Section 226 of Constitution of India in the nature of a Writ of Declaration declaring the provision of Rule 15(c) of the Tamilnadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999 as amended by G.O.Ms.No.38 Rural Development and Panchayat Raj (PR1) Department dated 05.03.2008 published in the Tamil Nadu Government Gazette Issue No.69 dated 05.03.2008 as void, unlawful, ultra virus and unconstitutional in respect of the buildings used for educational purposes by the member educational institutions of the Petitioner Association is concerned.

For Appellant : Mr.Isaac Mohanlal,
Senior Counsel
for M/s.Rameshkumar

For Respondents 1 and 2 : Mr.R.Shanmugasundaram,
Advocate General
assisted by
Mr.T.Arun Kumar,
Government Advocate

JUDGMENT

(Judgment of the Court was pronounced by T.RAJA.J)

This Writ Appeal has been filed against the Common Order of the learned Single Judge made in W.P.No.5757 of 2009 dated 30.07.2010 in and by which the prayer of the appellant to issue a Writ of Declaration, declaring the provision of Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 as amended by G.O.Ms.38, Rural Development and Panchayat Raj (PR-1) Department dated 5.3.2008, published in the Tamil Nadu Government Gazette Issue No.69, dated 5.3.2008 as void, unlawful, ultra vires and unconstitutional in respect of the buildings used for educational purposes by the member educational institutions of the writ petitioner Association, was refused.

2. Learned Senior Counsel appearing for the appellant explaining the need for challenging the above mentioned amended provision stated that originally, the Rule 15(3) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999, stated that the buildings used for educational purposes including hostels and libraries which are open to the public and public buildings used for charitable purpose of sheltering the destitutes or animals, if they fall within the meaning of house as defined in the Act, shall be exempted from paying the house tax. When the above provision was governing the subject-in-question, the State Government has introduced G.O. Ms.No.38, Rural Development and Panchayat Raj (PR-1) Department dated 5.3.2008, carrying out certain amendments, amending the column ''buildings used for educational purposes including hostels and libraries which are open to the public and public buildings used for charitable purpose of sheltering the destitutes or animals'' to the effect that buildings used for educational purposes by the Government aided institutions for conducting self-financing unaided courses, shall be subject to levy of house tax, as a result, the impugned Government Order in G.O.Ms.No.38 has come forward to grant exemption only to the buildings owned by the local bodies and private institutions aided by the Government.

3. Learned Senior Counsel for the appellant further stated that since the appellant, namely, the Tamil Nadu Nursery, Primary Matriculation and Higher Secondary Schools Managements Association are running only matriculation unaided schools, they are kept away from the exemption provision, as a result, they are all liable to pay the taxes. Therefore, the appellant is constrained to approach this Court by filing a Writ Petition raising various grounds inter alia the impugned amendment made to Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999, has to be declared as void, unlawful, ultra vires and unconstitutional in respect of the buildings used for educational purposes by the member educational institutions of the writ petitioner Association. It is also stated that the State Government has attempted to distinguish the educational institutions on the basis of the aid to be provided to them and by view of the amendment, the unaided educational institutions which are already over burdened are further put to face extra financial burden to pay the house/property tax whereas the institutions which are getting aid are in a comfortable position as they did not need to pay any salary for teaching and non-teaching staff, because they are given exemption from paying house tax. As a result, the State Government is discriminating the private institutions which come under self-financing basis against Act 14 of the Constitution of India. Therefore, the appellant challenged the impugned amendment on the ground that the same cannot have a nexus to the object and constitutional mandate sought to be achieved in this regard.

4. Learned Senior Counsel for the appellant also stated that however, when similar provisions in the Chennai City Municipal Corporation Act, 1919, Madurai City Municipal Corporation Act, 1971, Coimbatore City Municipal Corporation Act, 1981 and Tamil Nadu District Municipalities Act, 1920, were put to challenge on the similar line, a Division Bench of this Court in a batch of Writ Petitions in W.P.Nos.18008/2019 etc. batch by its judgment dated 13.09.2019, considering the similar and identical issue raised therein upholding the challenge to Act 6 of 2018 i.e. Tamil Nadu Municipality Laws (Second Amendment) Act, 2018, rejected all the Writ Petitions. However, the Division Bench has left open the question demanding the quantum of tax, as and when any need arises. Therefore, Mr.Isaac Mohanlal, learned Senior Counsel for the appellant fairly stated that nothing survives in this Writ Appeal.

5. Learned Advocate General assisted by the learned Government Advocate appearing for the respondents in support of the amendment submitted that although the learned Senior Counsel for the appellant fairly conceded the dismissal of the Writ Petition, so far as the challenge made by them to the amendment relating to taxation provision is concerned, there are plenty of

judgments by this Court as well as the Apex Court holding consistently that it must be left open to the appropriate and competent authority, namely, the legislature. In support of his submission, soliciting our attention to a judgment of the Apex Court in the case of Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and others reported in (2018) 9 SCC 1 submitted that every taxing statute including charging, computation and exemption clauses at the threshold stage should be interpreted strictly.

6. Learned Advocate General further drawing our attention to yet another judgment of the Apex Court in Sri Krishna Das vs. Town Area Committee, Chirgaon, reported in 1990 (3) SCC 645 submitted that taxing policy to be determined by the competent legislature or competent taxing authority and it is not open for the Court to question the same, unless there is a abusive of its powers and transgression of the legislative function in levying a tax. It is also further held that taxes may be and often are oppressive, unjust and even unnecessary, but, this can constitute no reason for judicial reference.

7. Interestingly enough, the Hon'ble Full Bench of our High Court in The President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District vs. Kamaraj College of Engineering and Technology, Virudhunagar [2009-5-L.W.193] has already answered the issue against the appellant that the exemption prescribed under Rule 15 is not mandatory and it is an enabling provision empowering the Village Panchayat or Panchayat Union to grant exemption to class of buildings as specified therein. The corollary is that it is open for the Village Panchayat or Panchayat Union not to grant such exemption in favour of one or other class of such buildings and the Court cannot force the Panchayat to exercise its discretionary power to grant exemption to one or other class of buildings in the absence of any decision taken by the Village Panchayat or Panchayat Union to grant such exemption. The above said decision in Kamaraj College of Engineering and Technology, Virudhunagar (cited supra) has been followed by another Division Bench of this Court in Periyapattinam Panchayat President, Thiruppullani Union, Ramanathapuram District Vs. the Correspondent, St.Joseph's Higher Secondary School, Periyapattinam, Ramanatha puram District [W.A.(MD) Nos.1384 and 1385 of 2013, dated 08.09.2017].

8. In view of all the above reasons, since the issue raised in this Writ Appeal is no longer res integra and the learned Senior Counsel for the appellant also fairly conceded that the Division Bench of Our High Court, while considering the similar and identical issue in W.P.No.18008/2019 etc. batch, has rejected all the writ petitions by a Common Order dated 13.09.2019, we do not find any issue for adjudication.

9. In the result, the Writ Appeal fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

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

2.The Director of Rural Development,
Government of Tamil Nadu,
Chennai.

+1cc to Mr.Ramesh Kumar, Advocate SR.No.42776

+1cc to the Government Pleader SR.No.42300

W.A.No.1746 of 2011

MG(CO)
RVM(24/09/2021)