IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1342 of 2013
and M.P.No. 1 of 2013

Dharmamurthi Rao Bahadur Calavala
Cunnan Chetty's Charities,
116, (New No.242) Govindappa Naicken Street,
Chennai - 600 001.
Rep.by its President,
Mr.M.Venkatesa Perumal ...Petitioner

Vs.

1. The State of Tamil Nadu rep.by
The Principal Secretary to Government,
Revenue (ULC) Department,
Fort St.George, Chennai - 600 009.

2. The Principal Secretary / Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

3. The Director of Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai - 600 005.

4. The Assistant Commissioner (Urban Land Tax),
Mylapore, Triplicane Taluk,
Chennai - 600 024.

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorarified Mandamus, calling all the records concerning G.O.Ms.No.423, Revenue dated 23.11.2012 issued by the 1st respondent to quash the same and direct the 2nd respondent or any another competent authority to hold a thorough enquiry concerning all the properties of the petitioner.

For Petitioner : Mr.R.S.Jeeva Rathnam, Senior Counsel
For M/s.Madhuri Donti Reddy

For Respondents: Mr.V.Nanmaran
Government Advocate

ORDER

The cancellation of exempetion from payment of Urban Land Tax under the provisions of Tamil Nadu Urban Land Tax Act, 1966 passed by the Government in G.O.Ms.No. 423, Revenue Department, dated 23.11.2012, is under challenge in the present writ petition.

2. The petitioner is Dharmamurthi Rao Bahadur Calavala Cunnan Chetty's Charities, is a charitable Trust established in the year 1920 and a public Trust. The Will of the Trust was made on 19.07.1920 by the donor Late Dharmamurthi Rao Bahadur Calavala Cunnan Chetty, who was a doyen among the Arya Vysya Community. The Will was probated in O.P.No.79 of 1921 on the file of the High Court of Madras. The Donor bequeathed all his properties to the Trust to be managed by successive Trust Boards. The income of the Charities is being spent for many Charitable and Welfare measures to the needy people apart from doing a good service to the students' community in the field of Education. The object of the Trust is to establish Educational Institutions, extend Medical Assistance to the poor and needy, monthly sustenance allowance to widows and destitute women, offer scholarships to deserving students from Schools and Colleges, offer free Choultry accommodation to patients etc.

3. The petitioner Trust has established and are managing five Educational Institutions which all are recognized by the Government of Tamil Nadu. All the Institutions are managed by the Members belonging to Arya Vysya Community speaking Telugu language from the date of their inception.

4. The grievance of the petitioner is that the Government granted exemption from payment of Urban Land Tax in G.O.Ms.No.137, Revenue Department, Dated 11.01.1979, in exercise of the powers conferred by clause (a) of Sub-section (1) of Section 27 of the Tamil Nadu Urban Land Tax Act, 1966, the Governor of Tamil Nadu, hereby exempts the said institution from the payment of Urban Land Tax with effect from fasli 1385. Pursuant to the exemption granted in the year 1979, the petitioner Trust is enjoying the benefit of exemption under the provisions of Tamil Nadu Urban Land Tax Act. While so, a show cause notice was issued by the first respondent on 18.08.1992. The show cause notice reveals that it had been brought notice of the Government that the petitioner charity has sold out a piece of land measuring 16 grounds 1288 sq.feet in S.No. 318, Triplicane Village of Madras District, out of a total extent of 68 ground 420 Sq.ft in that survey number to TVS Lucas Indian Service Limited in the year 1982 and 3 Grounds in favour of the Bangalore Emporium in 1991, in the same Survey Number and thereby violated conditions stipulated in the Government Order

in G.O.Ms.No.137, dated 11.01.1979.

5. Pointing out the above allegations and violations, the petitioner was provided with a opportunity to submit their reply within a period of 30 days from the date of receipt of the show cause notice.

6. The petitioner charity submitted their detailed reply to the show cause notice on 21.10.1992. In the reply given by the petitioner, they have furnished the reasons stating that the charity faced financial difficulties for the purpose of running the institutions on account of increased expenditure and they have approached the Government seeking permission to sell an extent of 14 grounds 783 sq.ft. It is contended by the petitioner that the portion of the land will not attract the the provisions of Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 and the petitioner is enable to sell the land to lessee. Accordingly the petitioner/Trust justified the sale made in favour of the lessee, who was in possession of the said land. The petitioner has stated that they have not violated the conditions of exemption granted in G.O.Ms.No.137, Revenue Department, Dated 11.01.1979. The detailed representation would reveals about the particulars of the sale effected as well as the sale considerations etc. The explanations submitted by the petitioner, in response to the show-cause notice, was considered by the Government and another show-cause notice was also issued by the Government. Meanwhile the petitioner filed W.P.No. 6842 of 2000 to quash the notice dated 10.03.2020 demanding the Urban Land Tax from the petitioner.

7. In other words, the demand notice was challenged, this court passed an order stating that no notice or opportunity is given for making any representation to the petitioner Trust before ordering the payment of Urban Land Tax. Accordingly, the opportunity was granted to the respondents to follow the procedures strictly as contemplated under Section 27 (2) of the Tamil Nadu Urban Land Tax Act and another writ petition was filed by the petitioner in W.P.No.17720 of 1995, wherein this Court passed an order directing the respondents to consider the claim of the petitioner for exemption by giving an opportunity of hearing to the petitioner enabling them to place all the supporting materials.

8. Pursuant to the orders of this Court, the first respondent issued another show-cause notice in proceedings dated 08.02.2008. In the said show-cause notice also, the first respondent clearly stated that the petitioner charity has sold out 51 grounds of land and thereby violated the conditions imposed in the exemption order and accordingly, directed the petitioner to submit their explanations within 30 days. The

petitioner submitted their reply on 07.03.2008 and the Assistant Commissioner, Urban Land Tax, issued notice on 19.11.2008, providing an opportunity of personal hearing to the petitioner and the date of personal hearing was fixed on 12.12.2008 at 11.00 am. Another letter was issued by the first respondent on 02.07.2009, which would reveal that one more opportunity is given to the petitioner for personal appearance on 31.07.2009 at 11.00 am. The petitioner sent a reply to the 4th respondent on 30.07.2009, stating that the petitioner Trust has not violated any of the conditions or the provisions of the Act and therefore, the exemption granted is to be continued.

9. Considering the facts and circumstances as well as the explanations, the first respondent passed impugned order in G.O.Ms.No.43, Revenue Department, dated 23.11.2012, canceling the exemption granted in G.O.Ms.No.137.

10. The learned counsel for the petitioner would urge this Court by stating that the petitioner was not provided with an opportunity of hearing and therefore, one more opportunity to be provided to the petitioner to place all the records before the respondents to establish their case. The petitioner has stated that the Empowered Committee also has not considered the explanations submitted by the writ petitioner's categorically stating that the petitioner Trust was facing financial difficulties and further they have not violated any of the conditions stipulated in the order.

11. It is contended that the report of the Empowered Committee was not furnished to the petitioner and therefore, another opportunity is to be given to the petitioner to submit their objections on the report of the Empowered Committee.

12. The learned Government Advocate appearing on behalf of the respondents, disputed the said contentions by stating that the procedures contemplated under the provisions of the Act, must be followed scrupulously by the respondents. Sufficient opportunities were given to the petitioner to represent their case. They have submitted a detailed representation on 06.05.1982 itself and they have approached this Court and pursuant to the orders of this Court, another show-cause notice was issued on 08.02.2005. Thereafter also the petitioner submitted their representations / explanations and opportunity of personal hearing was also given to the petitioner on two occasions and thus the authorities have followed the principles of natural justice and there is no violation, as such.

13. The learned Government Advocate appearing for the respondents referred the Government Order in G.O.Ms.No.1834, Revenue Department dated 29.10.1983, which provides certain

guidelines for grant of exemption to educational, religious, charitable and philanthropic institutions and the revised norms issued in the said Government Order, states about the existing guidelines and norms for considering the exemption applications. The existing guidelines were issued in G.O.Ms. No.1947, Revenue Department, dated 17.09.1976, G.O.Ms. No.2625, Revenue Department, dated 27.12.1976, G.O.Ms. No.1803, Revenue Department, dated 01.08.1978 & G.O.Ms. No.461, Revenue Department, dated 17.03.1983.

14. The petitioner Trust was granted with an exemption in the year 1979, based on the above Government Orders and therefore, the guidelines prevailing at the time of grant of exemption to the petitioner trust are that:

1) The Institutions should have been recognized as charitable and exemption granted under section 12A(a) of the Incoe Tax Act 1961.

2) The Institutions should spend atleast 90% of its net income towards its objectives and purposes, after deducting all the inevitable charges, like payment of local taxes, repairs and maintenance etc.

3) The institution should be a public Trust and not a private Trust.

15. Accordingly, certain revised guidelines were also given in the year 1983. However, the fact remains that the Government Order issued in G.O.Ms.No.137, dated 11.01.1979, itself provides the conditions for exemption. It is needless to state that the conditions stipulated in the Government Order for granting of exemptions are to be scrupulously followed. In the event of any violation or otherwise, the Authorities competent are empowered to initiate action for cancellation of exemption already granted. The exemptions are granted by invoking powers under the Tamil Nadu Urban Land Tax Act and the guidelines are issued by the Government from time to time, considering the various factors. Therefore, even at the time of grant of exemption, a condition was imposed that the charitable institution cannot be dispossess the vacant lands and the other conditions are stipulated in the other guidelines, wherein there is a clear mentioning that the institutions should spend atleast 90% of its net income towards its objectives and purposes, after deducting all the inevitable charges, like payment of local taxes, repairs and maintenance etc. Therefore, these conditions are applicable to the petitioner Trust.

16. In this context, the respondents have elaborately considered the case of the writ petitioner with reference to the violations set out in the show-cause notices. It is an admitted fact that certain conditions were imposed at the time of grant of exemption in favour of the writ petitioner in G.O.Ms.No.137

dated 11.01.1979.

17. As per the above explanatory statements the Charities were having vacant land measuring 15 Ground and 974 Sq.ft. comprised in S.No. 107/9, T.S.No. 5, Block No.1, situated at Sembium, Madras – 600 011. The Charities were in dire need of funds for putting up buildings for their Perambur School. Since this land was intended for use of Play Ground which was far away from the School and not actually used for the purpose, the Charities decided to sell this land and made an Advertisement inviting offers for the sale. One Mr.T. Andiappa Nadar offered for the purchase of the land and the Charities entered into an Agreement with him on 10.11.75 for sale of land at Rs. 10,011/- per ground for a total cost amounting to Rs. 1,41,154/-. The High Court's permission for sale was obtained in C.S.No. 64 of 1976, on 01.06.76 to sell either to Sri T. Andiappa Nadar (Agreement Holder) or to his nominees. The Purchaser converted the said land into building plots and the intended purchasers of some plots paid the sale amount to the Charities and the plots were registered in their favour. Some of them paid their sale amount to the Charities, but the Sale Deeds were not registered in their favour. Of the total extent of 15 grounds & 974 Sq.ft. in Sirvallur Village only 4 grounds and 1048 Sq.ft. sold to other parties remained to be registered, and it continued to be in the name of the Charities, even though possession had been given to the allottees.

18. After making the above sales the total extent of land that are now owned by the Charities works out to approximately 122 Grounds and 288 Sq.ft. as detailed below:

Sl. No.	Name of the Village	R.S/T. S.No.	Extent Owned Gr.Sq. ft	Extent sold	Net area now owned
1.	V.O.C. Nagar	10315	0.0696		
		3831	0.1548		
		10351	0.0102		
		11006	0.2195		
		11007	1.1450		
		11344/1	0.2277		
		11706	2.1822		
		11043	1.2131		
			9.0221	--	9.0221
2	Triplicane	318	68.0420	33.1679	34.1141
		1824 &	2.1769	--	2.1769
		1825			
3	Perambur	360/1	1.0702		
		360/2	1.0663		
		360/3	0.1768		

		361/1	0.1100		
		361/2	0.0340		
		361/4	0.0125		
		362	12.2270		
		363	1.0950		
		364/2	0.2164		
			19.0482	--	19.0482
4	Egmore	230	1.2301		
		862	11.2164		
			13.2065	--	13.2065
5	Siruvallur	5	15.0974	4.1048	10.2326
		2	12.0177	--	12.0177
6	Tondiarpet	708	0.2067		
		714/2	0.1226		
		665/2	0.1510		
		2015	13.1067		
			15.1070	--	15.1070
7.	Sathangadu (Madras City Belt area)	173/14	10.1265	10.1265	--
		173/15	4.0419	4.0419	--
		173/pt	4.06637		4.0637
			14.2299	52.2011	122.0288

19. With reference to item (ii) above, it is respectfully submitted that the Tamil Nadu Urban Land Tax Act, 1966, certain concessions had been provided statutorily for educations, religious, charitable and philanthropic institutions by way of exemption from the levy of Urban Land Tax in respect of certain lands used/owned by the Institution. Later on accepting recommendations made by Urban Land Tax Exemption Committee, in G.O.Ms.No. 1834, Revenue Department, dated 29.10.1983 it was ordered that the following revised norms and guidelines, be adopted while examining cases for grant of exemption of Urban Land Tax from educational, religious, charitable and philanthropic institutions:-

- (1) The Institution should have been recognised as Charitable and exemption granted under section 12A(a) of the Income Tax Act, 1961.
- (2)The institution seeking exemption from the Tamil Nadu Urban Land Tax Act, should be a public trust and not a private trust. The cases of trusts seeking exemption would be subject to their satisfying the requirements of being a public Trust.
- (3) After deducting all the inevitable charges like payment

of local taxes, repairs and maintenance etc., the institutions should spend atleast 90% of the net income on their objectives and purposes. Such expenditure could be incurred in a block period of three years.

- (4) The expenditure on establishment charges in respect of such institutions would be subject to a ceiling of 40% of its income while determining its eligibility for exemption.
- (5) Transfer to a capital or a reserve fund will be subject to a ceiling of 25% of the balance amount of income after deducting the expenditure on staff (subject to ceiling of 40%) and other inevitable expenses like electricity charges maintenance, repair charges etc., while determining its eligibility for exemption.

20. The exemption request of the petitioner was examined with reference to above norms/guidelines. The income-expenditure statements for the year 1993-1994, 1994-95 and 1995-1996 were scrutinized. As per the illustration mentioned in Para 7 of the G.O.Ms.No. 1834, Revenue Department, dated 29.10.1983, calculation was made and it was arrived that 53% of its net income was spent by the petitioner towards its objectives as detailed below:

Sl. No.	PARTICULARS	1993-94 Rs.	1994-95 Rs.	1995-96 Rs.
1	Income	81,27,441	1,02,32,081	1,35,40,921
2	Salary			
	(a) 40% of the income	32,50,976	40,92,832	54,16,368
	(b) Salary paid	8,88,408	8,78,455	10,28,498
3	Balance (1-2b)	72,39,033	93,53,626	1,25,12,423
4.	Essential expenses			
	• Establishment expenditure	-	-	-
	• Maintenance	-	15,686	-
	• Tax Paid	-	-	-
	Total	-	15,686	-
5	Balance (3-4d)	72,39,033	93,37,940	1,25,12,423
6	Savings			
	• 25% out of the column 5	18,09,758	23,34,485	31,28,106
	• Actual Savings	59,84,174	54,34,119	48,69,082
7	Net Income (5-6a)	54,29,275	70,03,455	93,84,317
8	Amount spent towards objectives	12,54,859	38,74,894	76,35,109
9	Percentage spent towards objectives out of net income	23%	55%	81%
10	Average	53%		

Based on the guidelines issued in G.O.Ms.No.1834, Revenue Department, dated 29.10.1983 and since the institution has spent only 53% of the income towards the objectives the request of the petitioner for the grant of exemption was rejected vide G.O.Ms.No. 423, Revenue Department, dated 23.11.2012.

21. This Court is of the considered opinion that the petitioner has raised a ground that reasonable opportunity of hearing was not provided. However, perusal of the documents would reveal that the initial show-cause notice was issued on 18.08.1992 and thereafter, the petitioner submitted its detailed reply on 21.10.1992. The petitioner has filed the writ petitions and this Court granted opportunity to the petitioner. Thereafter a fresh show-cause notice was issued on 08.02.2008 by the respondents. The petitioner had submitted their reply on 07.03.2008. Subsequently, the 4th respondent provided two opportunities of personal hearing to the writ petitioner. Thus personal hearing letters were also responded by the petitioner by furnishing reply on 30.07.2009. Thereafter the impugned order was issued by the first respondent on 27.11.2012. Thus, the respondents had followed the procedures contemplated.

> "Section 27 of the Urban Land Tax Act contemplates, the Government, if satisfied that the payment or urban land tax in respect of any class of urban lands or by any class of persons will cause undue hardship, they may, subject to such rules as may be made in this behalf, by order -
>
> (a) exempt such lands or persons from the payment of the urban land tax, or
>
> (b) reduce the amount of such urban land tax whether prospectively or retrospectively and Sub-Section 2 stipulates that "no such cancellation or modification shall be made unless the party likely to be affected by such cancellation or modification has had a reasonable opportunity of making his representations."

22. In the present case, the petitioner has submitted an elaborate reply to the first show cause notice dated 18.08.1992. Opportunity of personal hearing was given to the petitioner and even thereafter the petitioners have submitted their further representations. Thus the opportunities contemplated under the provisions of the Act, had been complied with and thus there is no violation of principles of natural justice.

23. As far as the violations are concerned, the respondents have elaborately considered the report of the Empowered Committee and the facts and explanations submitted by the writ petitioners. The first respondent has categorically found that

the petitioner has sold an extent of 33 grounds and 1679 sq.ft out of 68 grounds and 420 sq.ft by violating the conditions of exemption in G.O.Ms.No.137, Revenue Department, dated 11.01.1979.

24. The details regarding the sale as well as the explanations offered by the petitioner were elaborately considered by the respondents. Another finding made by the respondent would reveals about the income and expenditure statements of the petitioner. The details considered by the respondents are elaborated in Paragraph No. 4 of the counter:

> "4. The income and expenditure statements of the petitioner charities shows that it is getting income by way of rent from the buildings constructed in the case lands and as interest for the deposit made in financial institutions. Major amount of income is spent on contributions to schools, run by them, distribution of milk to poor children etc. To analyse the eligibility of the institution to get exemption under section 27(1) of the Act, interms of its expenditure on its objectives. Government have prescribed certain norms and conditions in G.O.Ms.No. 1834, Revenue Department, dated 29.10.1983. According to the norms the institution should spend atleast 90% of its net income on its objectives, after deducting the amount spent on salary to its staff (Upto 40% of its income), other inevitable expenditure incurred on establishment maintenance of taxes and after deducting 25% of the balance amount of savings. The income and expenditure statements of the institution for 1993-94, 1994-95 and 1995-96 were examined with the norms prescribed in the G.O.Ms.No. 1843, Revenue Department, dated 29.10.1983. The institution has spent the following percentage of amount towards its objectives and purposes, during the following years.
>
> 1993-94 : 23% (Below 90%)
> 1994-95 : 55% (Below 90%)
> 1995-96 : 81% (Below 90%)
> Average 53% (Below 90%)"

25. The sale of property was admitted by the petitioner. However, they have furnished certain reasons regarding the financial difficulties raised. Under these circumstances, this Court is of the considered opinion that the exemption granted was canceled after considering the facts and circumstances as well as the representations submitted by the Empowered Committee is in accordance with the provisions of the Act. Thus, there is no violation, which is traceable with reference to the opportunities provided to the petitioner to defend their case.

26. Accordingly, this Court has no hesitation to arrive a decision that the petitioner has not established any acceptable grounds for the purpose of interfering with the order impugned and the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Principal Secretary to Government,
   The State of Tamil Nadu,
   Revenue (ULC) Department,
   Fort St.George, Chennai - 600 009.

2. The Principal Secretary / Commissioner of Land Reforms,
   Chepauk, Chennai - 600 005.

3. The Director of Urban Land Ceiling and Urban Land Tax,
   Chepauk, Chennai - 600 005.

4. The Assistant Commissioner (Urban Land Tax),
   Mylapore, Triplicane Taluk,
   Chennai - 600 024.

+1cc to the Government Pleader, S.R.No.32591

W.P.No.1342 of 2013
and M.P.No. 1 of 2013

GPL(CO)
RGA(13/08/2021)