IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	08/01/21
Pronounced On	25.01.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.13964 & 13965 of 2012, 35179 of 2013
and 25226 & 25178 of 2015
and
M.P.Nos.1 & 1 of 2012, 1 of 2013 and
1, 1, 2 & 2 of 2015

(Through Video Conferencing)

W.P.Nos.13964 & 13965 of 2012

M/s.T.K.K.N.N. Vysya Charities
Rep. by its trustee
Mr.V.Dhamodhar
No.83/36, V.R.Pillai Street,
Chennai - 5. ... Petitioner

Vs.

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

2.The Special Tahsildar,
/ The Urban Land Tax Officer,
Mylapore, Triplicane Circle,
Chennai - 28. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 2nd respondent dated 03.04.2012 in Form VI issued under Section 14 of the Urban Land Tax Act for fasli year / part of the fasli year 1406 to 1421 and 1401 to 1405 respectively comprised in Survey Nos.1683, 84, 85, 86, 87/1, 87/3, 87/4, 2699 and 1699 in Block No.34, in Triplicane Village, Mylapore Taluk, Chennai District and quash the same being illegal and arbitrary.

For Petitioner : Mr.V.Ragavachari for
Mr.S.N.Kirubanandam

For Respondents : Mr.N.Inbanathan, AGP.

W.P.No.35179 of 2013

M/s.T.K.K.N.N. Vysya Charities
Rep. by its Trustee
Mr.V.Dhamodhar
No.83/36, V.R.Pillai Street,
Chennai - 5. ... Petitioner

Vs.

1.The Secretary to Government,
Urban Land Tax,
St. Fort George, Chennai - 9.

2.The Commissioner Director,
/ Urban Land Ceiling and
Urban Land Tax, Chepauk,
Chennai - 5. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 1st respondent in G.O.(Ms.).No.459, dated 20.11.2013 and quash the same being illegal and arbitrary.

For Petitioner : Mr.V.Ragavachari for
Mr.S.N.Kirubanandam

For Respondents: Mr.N.Inbanathan, AGP.

W.P.No.25226 of 2015

M/s.T.K.K.N.N. Vysya Charities
Rep. by its Trustee
Mr.V.Dhamodhar
No.83/36, V.R.Pillai Street,
Chennai - 5. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary Urban Land Tax Ceiling,
St. George Fort,
Chennai - 9.

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

3.The Special Tahsildar / The Urban
Land Tax Officer,
Mylapore, Triplicane Circle,
Triplicane Taluk,
Chennai - 28. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 1st respondent in G.O.Ms.No.515, Revenue 3(1), dated 19.11.2004 and quash the same.

For Petitioner : Mr.V.Ragavachari for
Mr.S.N.Kirubanandam

For Respondents : Mr.N.Inbanathan, AGP.

W.P.No.25178 of 2015

M/s.T.K.K.N.N. Vysya Charities
Rep. by its Trustee
Mr.V.Dhamodhar
No.83/36, V.R.Pillai Street,
Chennai - 5. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by Secretary,
Revenue [(ULC-III)(1)] Department,
St. George Fort,
Chennai - 9.

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

3.The Special Tahsildar / The Urban
Land Tax Officer,
Mylapore, Triplicane Circle,
Triplicane Taluk,
Chennai - 28. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 1st respondent in G.O.Ms.No.459, dated 20.11.2013 and quash the same.

For Petitioner : Mr.V.Ragavachari for
Mr.S.N.Kirubanandam

For Respondents: Mr.N.Inbanathan, AGP.

C O M M O N O R D E R

By this common order, all the five writ petitions are being disposed of. In these Writ Petitions, the petitioner has challenged the following impugned orders:-

Table:-

Sl. No.	Writ Petition No.	Impugned Order Reference/date	Relief
1	13964/2012	Form - VI dated 03.04.2012	To call for the records on the file of the 2nd respondent dated 03.04.2012 in Form VI issued under Section 14 of Urban Land Tax Act for fasli year / part of the fasli year 1406 to 1421 compromised in survey No.1683, 1684, 1685, 1686 & 1687 in Block No.34, in Triplicane Village, MylaporeTaulk, Chennai District and quash the same being illegal and arbitrary.
2	13965/2012	Form - VI dated 03.04.2012	To call for the records on the file of the 2nd respondent dated 03.04.2012 in Form VI issued under Section 14 of Urban Land Tax Act for fasli year / part of the fasli year 1401 to 1405 compromised in survey No.1683, 1684, 1685, 1686, 1687/1, 1687/3, 1687/4, 2699 & 1699 in Block No.34, in Triplicane Village, MylaporeTaulk, Chennai District and quash the same being illegal and arbitrary.
3	35179/2013	G.O.(Ms).No.459 dated 20.11.2013	To call for the records on the file of the 1st respondent (The Secretary to Government, Urban Land Tax, Chennai) in G.O.(Ms) No.459, dated 20.11.2013 and quash the same being illegal and arbitrary.
4	25178/2015	G.O.(Ms).No.459	To call for the records on the file of the 1st respondent [The State of Tamil Nadu, represented by Secretary (Revenue (ULT III)(1)) Department]in G.O.(Ms) No.459, dated 20.11.2013 and quash the same as illegal and arbitrary.

Sl. No.	Writ Petition No.	Impugned Order Reference/date	Relief
5	25226/2015	G.O.(Ms). No.515, Revenue 3(1), dated 19.11.2004	To call for the records on the file of the 1st respondent (The State of Tamil Nadu, represented by Secretary, Urban Land Tax Ceiling, Chennai) and quash the same.

2. The petitioner was earlier exempted from payment of Urban Land Tax vide G.O.Ms.No.2122 dated 27.10.1977 subject to certain conditions. The exemption was granted by the Government of Tamil Nadu in the exercise of power conferred under Section 27(1)(a) of the Tamil Nadu Urban Land Tax Act, 1966. The relevant portion of G.O.Ms.No.2122, dated 27.10.1977 granting exemption to the petitioner is reproduced below:-

> Now, therefore, 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 (Tamilnadu Act, 12 of 1966), the Government of Tamil Nadu hereby exempt the said institution from the payment of urban land tax in respect of 81 grounds and 2106 sq.ft of lands owned by the T.K.K.N.N.Vysya charities with effect from fasli 1386 abd grants remission of unpaid tax for fasli 1385, subject to the following conditions:-
>
> i. If the institution disposes of the vacant lands by sale, gift, etc, it has to pay to the Government the entire amount of urban land tax payable from fasli 1385 and upto the date of such alienation but for exemption; and
>
> ii. The exemption will apply so long as the urban lands re specifically used fro the purpose ofthe institution and if there is any violation in the use of or diversion of the income from the urban lands the entire urban land tax shall be levied as provided in the Act.

3. The above exemption was sought to be denied to the petitioner vide G.O.Ms.No.515, Revenue 3(1), dated 19.11.2004 (impugned in W.P.No.25226 of 2015). G.O.Ms.No.515, Revenue 3 (1), dated 19.11.2004 instructed the Asst. Commissioner of Urban Land Tax to take expeditious steps to recover the amount from the petitioner.

4. Thereafter, Form VI were issued to the petitioner under Section 14 of Urban Land Tax Act, 1966 to the petitioner for fasli year1406 to 1421 and fasli year 1401 to 1405 to recover tax from the petitioner. These have been impugned in W.P Nos.13964 of 2012 & 13965 of 2012 .

5. Impugned G.O.Ms.No.459, dated 20.11.2013 (impugned in W.P.No.35179 of 2013 & W.P.No.25178 of 2015) eventually cancelled the exemption granted to the petitioner vide G.O.Ms.No.2122 dated 27.10.1977.

6. The relevant portion of the impugned G.O.Ms.No.459 dated 20.11.2013 impugned in W.P.No.35179 of 2013 & W.P.No.25178 of 2015 is reproduced below:-

> 3) It is seen from the sale agreement that the petitioner charities have agreed to sell the property measuring 9 Grs.1891 Sq.ft., in S.No.1687/1 of Triplicane Village to one Srinivasa Enterprises for a sale consideration of Rs.53,62,500/- vide Sale agreement dated 07.04.1994. The petitioner has not furnished audited accounts from the year of sale i.e., 1994 and for the subsequent years upto the year 2000 as called for. The Charities have only furnished audited accounts for the years 2001 to 2011 which do not reflect the income derived from the sale proceeds and the way the money was spent etc., The petitioner charities have furnished audited balance sheets from the years 01.04.1999 to 31.03.2011. The statements also do not reflect the income derived from the sale and how it was spent towards objectives.
>
> 4) In view of the above, the Commissioner of Urban Land Ceiling and Urban Land Tax has requested to Government for confirming the withdrawl of exemption granted in the Government Order second read above.
>
> 5) The Government have examined the case in detail and to accept the recommendation of the Commissioner of Urban Land Ceiling and Urban Land Tax and ordered to reject the reconsideration petition of Tvl. T.K.K.N.N. Vysys Charities on the following grounds:-
> The sale agreement reveals that the petitioner charities have agreed to sell the property measuring 9 Grs 1891 sq.feet in S.No.1687/1 of Triplicane Village to one Srinivasa Enterprises for a sale consideration Rs.5362500/- vide sale agreement dated 07.04.1994.

i. The petitioner has not furnished audited accounts from the year of sale i.e. 1994 and for the subsequent years up to the years 2000.

ii. The Charities have only furnished audited accounts for the year 2001 - 2011 which do not reflect the income desired from the sale proceeds and the way the money was spent.

iii. The petitioner Charities have furnished audited balance sheet from the year 01.04.1999 to 31.03.2011. It does not reflect the income derived from the sale and how it was spent towards objectives.

6. This order issues with the concurrence of the Finance Department vide its U.O.No.50516/Fin.(Rev)/2013, dated 18.10.2013.

7. Impugned G.O.Ms.No.459, dated 20.11.2013 is based on a report dated 07.12.1998 of the Assistant Commissioner of Urban Land Tax.

8. The case of the petitioner is that it is a charitable trust and that it had huge parcel of land measuring 86 grounds and 2,366 sq.ft., in S.Nos.1683, 1684, 1685, 1686, 1687/1, 1687/3, 1687/4, 1699 and 2699 comprised in Block No.34, situated in the Sub Registration District of Triplicane and Registration District of Madras which was being encroached.

9. It is the case of the petitioner that the property of the petitioner was surrounded by slums and there were several encroachments and that on account of this fact that it was unable to realize the amounts from the tenants and therefore decided to sell its property and had earlier entered into an sale agreement with one M/s.Theej Constructions Construction vide agreement dated 26.09.1992.

10. The petitioner therefore filed C.S.No.114 of 1993 and Application No.549 of 1993 under Order 13 Rule 4 read with Order 13 Rule 1(f) of the Original Side Rules to sell entire extent of dry land of 86 grounds and 2,366 sq.ft.

11. By an order dated 04.05.1993, the prayer of the petitioner in C.S.No.114 of 1993 and Application No.549 of 1993 was partly allowed by this Court and allowed the petitioner to sell only an extent of 10 grounds and 2,077 sq.ft., out of the total extent of 86 grounds and 2,366 sq.ft. to said M/s.Theej Construction at the rate of Rs.5.5 lakhs per ground.

12. The petitioner was directed to be deposit the advance amount received by it, within two weeks months from the date of the order and the balance amount of sale consideration, to the credit of the suit within a period of four months from the date of the order and thereupon, the trustees of the petitioner were to execute necessary sale deed in favour of the said M/s.Theej Constructions after obtaining unnecessary sanction and permission from the Competent Authorities.

13. There was also a direction that the amount was to be invested in Indian Bank, Adyar in the name of the petitioner trust initially for a period of two years to be renewed from time to time and the trustees of the petitioner were permitted to withdraw the interest alone from such deposit and spend the same for the performance of the charities mentioned in the decree dated 04.05.1993 of the Court in the suit and application.

14. It appears that the petitioner was unable to sell the land to the said M/s.Theej Constructions. Under these circumstances, the Judgment and Decree dated 04.05.1993 in C.S.No.114 of 1993 came to be modified on 27.04.1994 by substituting the name of M/s.Theej Constructions with name of M/s.Srinivasa Enterprises.

15. The extent of land to be sold to the said M/s.Srinivasa Enterprises was also restricted to 9 grounds 1891 sq.ft from 10 grounds and 2,077 sq.ft that was proposed to be earlier sold to M/s.Theej Constructions as per the sanction in Judgment and Decree dated 04.05.1993 in C.S.No.114 of 1993.

16. The denial of exemption and demand of Urban Land Tax from the petitioner in the respective impugned orders/G.O.Ms. are challenged in these Writ Petitions by the petitioner primarily on the ground that the provisions of the Urban Land Tax Act, 1966 are not applicable to the petitioner in view of Section 29 of the Urban Land Tax Act, 1966.

17. It is submitted that the petitioner was entitled to exemption under Section 29 of the Urban Land Tax Act, 1966 independently. It is submitted that exemption under Section 29 is unconditional, subject to the holder possessing requisite qualifications set therein.

18. It is the case of the petitioner that provisions of the Urban Land Tax Act, 1966, did not apply to the petitioner in terms of the Section 29 in as much as the Urban Land of the petitioner was used for charitable purposes in terms of sub clause (c), (j) & (k). Exemption under Section 29, sub clause (c), (j) & (k) are reproduced below:-

(c) any urban land owned by a religious institution which is set apart for public worship and is actually so used, including any urban land owned by such institution and which is appurtenant thereto but not including any urban land owned by such institution and -

i. which is vacant, or
ii. in which buildings from which income is derived have been constructed.

(j) any urban land used_

i. for charitable purposes of sheltering destitute persons or animals;
ii. for orphanages, homes and schools for the deaf and dumb and for the infirm and diseased;
iii. for asylum for the aged and for fallen women.

(k) subject to the provisions of this section, any urban land actually used for religious, charitable or philanthropic purposes by such religious, charitable or philanthropic institutions, as the Government, by notification, specify, but not including any urban land owned by such institution and -

i. which is vacant, or
ii. in which buildings from which income is derived have been constructed;

19. Alternatively, it was submitted that the sale of the land was pursuant to the permission granted by this Court and therefore exemption granted to the petitioner vide G.O.Ms.No.2122 dated 27.10.1977 cannot be denied and that the first condition to paragraph 3 of the aforesaid G.O.Ms., cannot be apply against the petitioner to demand of Urban Land Tax.

20. It is further submitted that the petitioner trust was unable to maintain and retain its lands as there were large scale encroachments and default by the tenants and therefore it was not able to generate revenue by collecting the rents from its tenants for being deployed for charitable purpose and therefore, the petitioner cannot be penalised merely because it was compelled to sell a portion of the land for preserving charitable activity of the petitioner. It was submitted that the lands were sold only for the purpose of charitable purpose and not for making any profits by the trustees of the petitioner.

21. It is further submitted that Income Tax Department has recognized the petitioner as a charitable institution for the purpose of Income Tax Act, 1961 and that status of the petitioner that it is a charitable institution has not been revoked right from 1977 and that the petitioner is periodically filing audit report under Section 12(b) of the Income Tax, 1961 as a charitable and religious trust/institutions.

22. A reference was made to the following decisions rendered by this Court:-

i. Agasthiyar Trust Vs. The Government of Tamil Nadu, (1988) 1 MLJ 336.
ii. Southern India Education Trust Vs. Government of Tamil Nadu represented by its Commissioner and Secretary, 1999 (3) CTC 711.
iii. T.M.Gopalakrishnakone Trust, Madurai Vs. State of Tamil Nadu, 1985 (98) L.W. 491.
iv. S.Sarangapani Iyengar Vs. The Assistant Commissioner, Urban Land Tax, Alandur, Saidapet, 1988 (1) L.W.152
v. The Commissioner of Income Tax Vs. Chandra Kanta Rohatgi, (2006) 150 TAXMAN 19 (ALL).
vi. The Mount Mutt, Rock Fort VS. The Assistant Commissioner, Urban Land Tax, 1988 (2) L.W.289.

23. Defending the impugned order, the learned counsel for the respondents submits that the impugned orders are sustainable. Specifically reference was made to the audit report dated 06.07.1999 by M/s.P.Pattabhiraman and Coy., Charted Accountants, wherein, they are stated as follows:-

> In our opinion and to the best of our information given to us, the said accounts give the true and fair view, subject to our remarks stated below:
>
> 1. The Charity has kept huge cash balances for months together without any specific purposes and its requirements.
>
> 2. The Charity has purchased many items without obtaining the competitive quotations.
> 3. The Charity has given, under suspense account in the previous year Rs.20,000/-. Further payments were made to the tune of Rs.20,000/- under suspenses account. The entire amount was recovered on 31st March '99, in cash. The explanation is not satisfactory.

4. Many purchases were made without bills.

5. General Body has passed resolutions restricting the Trustees to sell some properties. Legal steps were taken for sale and has spent Rs.65,000/-. The details of properties to be sold are not known.

6. In the case of statement of Affairs of the above named Charity as at 31.3.99 and,

7. In the case of the Income and Expenditure account, the excess of Expenditure over Income for the Accounting year ended 31st March '99.

24. Similar reports by other Chartered Accountants for the subsequent years were also referred, wherein, it is stated that there are large scale of irregularities and therefore it warranted revocation of the exemption granted to the petitioner vide G.O.Ms.No.2122, dated 27.10.1977.

25. Finally, the learned counsel for the respondents drew my attention to the averments in their counter affidavit. It is submitted that from Form XIII declarations filed under Section 27(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, it is evident that the petitioners trust has sold out an extent of 9 grounds and 1,891 sq.ft in Town Survey No.1687/1 of Triplicane Village to Tvl.Srinivasa Enterprises. The petitioner herein was enquired on 24.09.1996 by the officers of the respondents. The Assistant Commissioner (Urban Land Tax) Mylapore had inspected the land and sent a report in Rc.No.161/98/B2, dated 07.12.1998, as per which, the petitioner trust had sold about 9 grounds and 1,891 sq.ft of land in Survey No.1687/1 of Triplicane Village.

26. It was further informed that the property that was sold was a fully built up property known as “Parthasarathy Swamy Sabha” and that the structure that was in existence for the past 90 years was demolished and a new building was constructed by the purchaser of the land and that there was no vacant land that was sold. Hence, it was recommended to withdraw the exemption granted to the petitioner charitable institution.

27. It is submitted that based on the report of the Assistant Commissioner, the Government concluded that the petitioner had violated the conditions stipulated under Section 27(1) of the Act and therefore, the benefit of exemption was sought to be denied to the petitioner. It is submitted that the impugned G.O.Ms.No.459, dated 20.11.2013 was issued by the Government withdrawing the exemption granted to the petitioner only after considering the report of the

Assistant Commissioner and directed the concerned Authority to take further action to collect the tax issued in G.O.Ms.No.515, Revenue [ULC 3(1)] Department, dated 19.11.2004.

28. It is further submitted that as regards the averments made in paragraph 6 of the affidavit, the records show that 4-C Notice was issued by the Assistant Commissioner (Urban Land Tax) Mylapore, on 10.01.2011 (actually 14.01.2011) to the petitioner to lodge its objection, if any, before her on 28.01.2011 in connection with the amount of Urban Land Tax.

29. The petitioner merely sent a letter only on 28.11.2011 and requested four weeks time. However, the petitioner did not show any interest in replying to the notice of the Assistant Commissioner (Urban Land Tax) Mylapore.

30. Later, based on the records filed, the assessment order was passed with effect from Fasli 1401 to 1405 for the entire holdings till the sale of land and after deleting the sold out portion from 1406, for the balance extent the tax was levied as per the provisions of the Act. Hence the contention of the petitioner is devoid of merits.

31. It is further submitted that as regards the averments made in paragraph 7 of the affidavit, since the petitioner has violated the stipulated conditions in G.O.Ms.No.2122 dated 27.10.1997, the Government had proposed to withdraw the exemption vide G.O.Ms.No.515, Revenue [ULC 3(1)] Department, dated 19.11.2004 and directed the collection of tax amount and also to take further action to levy tax.

32. The action taken by the Assistant Commissioner was in accordance with the provisions of the Act and also with reference to Government norms. It was further submitted that since the petitioner had not furnished any records to prove that the income derived from sale of lands was utilized for the objectives of the trust, the action taken by the Assistant Commissioner was legally correct. Hence, it was prayed that the writ petitions may be dismissed as devoid of merit with costs.

33. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

34. The points for consideration in these writ petitions are as follows:

i. whether the petitioner was entitled to exemption without any conditions under Section 29(c), (j) & (k) of the Land Urban Tax Act, 1966 as was argued by the learned counsel for the petitioner?or

ii. whether the petitioner was bound by the terms of exemption under Notification G.O.Ms.No.2122 dated 27.10.1977? and

iii. whether the petitioner violated the conditions of the exemption granted Section 27 of the Urban Land Tax Act, 1966 under the aforesaid exemption notification dated 27.10.1997 vide G.O.Ms.No.2122 warranting issue of the impugned Notification in G.O.Ms.No.459 dated 20.11.2013?

35. The Act defines the expression "urban land" in Section 2(13) as follows:-

> (13) "urban land" means any land which is used or is capable of being used as a building-site and includes garden or grounds, if any, appurtenant to a building but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet crops.

36. Section 5 of the Tamil Nadu Urban Land Tax Act 1966 is the charging Section for levying and collecting urban land tax. As per the aforesaid Section, there shall be levied and collected for every fasli year commencing from the date of commencement of the Act, a tax on each urban land from the owner of such urban land [at the rate specified in [the first Schedule].]

37. The provision of the Tamil Nadu Urban Land Tax Act 1966 contemplates 2 kinds of exemptions. Section 27 contemplates a grant of conditional exemption to an institution. Under the aforesaid provision, the Government may by a notification exempt a person from payment of urban land tax in respect of any class of urban lands or by any class of person, if the levy of urban land tax under the said Act will cause undue hardship to such person. Exemptions are granted subject to such rules as may be made in that behalf the Government for exempting a person from payment of urban land tax.

38. On the other hand, under Section 29, exemptions are granted to specified categories of land holdings. The exemptions are by and large automatic subject to the status of a person. Section 29 (c) applies to any urban land owned by any religious institution which is set a part for public worship and is actually so used including any urban land owned by such institution and which is appurtenant to it. It excludes land :-

i. which is vacant, or

ii. in which building from which income is derived have been constructed.

39. Under Section 29(j) of the Tamil Nadu Urban Land Tax Act 1966, any urban land used for charitable purpose for sheltering destitute person or animals or for orphanages, homes and schools for the deaf and dumb and for the infirm and deceased or for asylum for aged and for fallen women are exempt from urban land tax.

40. Under Section 29(k) of the Tamil Nadu Urban Land Tax Act 1966, the Government may by notification exempt any urban land actually used for religious, charitable or philanthropic purpose by a religious, charitable or philanthropic institution. Again, such exemption is not applicable to any urban land of which such institution-

i. which is vacant, or
ii. in which building from which income is derived have been constructed.

41. Though exemption under Section 29 (c) and (j) is automatic, Section 29 (k) contemplates issue of notification by the government for grant of such exemption.

42. According to the petitioner, it was in possession of vacant land in respect of which exemption was granted by the government and since the income from the vacant land and was meant for being deployed for charitable purpose, there was no necessity for grant of exemption as the exemption was automatic.

43. The facts on record indicate that the land as such was not used for any of the intended purpose under Section 29 (c) and (j) is automatic, Section 29 (k) of the Tamil Nadu Urban Land Tax Act 1966.

44. On the other hand, the report of the Assistant Commissioner of Urban Land Tax indicates that the property that was sold was a fully built up property known as "Parthasarathy Swamy Sabha" and that the structure that was in existence for the past 90 years was demolished and a new building was constructed by the purchaser of the land and that there was no vacant land that was sold. Hence, it was recommended to withdraw the exemption granted to the petitioner charitable institution.

45. Further, the objects of the Trust also do not indicate that any of activity of the petitioner was to be carried out by the petitioner on the land meeting the requirement of exemption under Section 29(c), Section 29(j) and Section 29(k) of the Tamil Nadu Urban Land Tax Act 1966. In fact, the petitioner had also never claimed such exemption under the aforesaid provision all along.

46. The objects of the Trust as has been extracted in order dated 04.05.1993 in C.S.No.114 of 1993 and Application No.549 of 1993 also do not indicate the use of the land for specified purpose in these provisions. Even according to the petitioner only the proceeds from the property were used for religious and charitable purpose. Therefore, exemption under Section 29(c),Section 29(j) and Section 29(k) of the Tamil Nadu Urban Land Tax Act 1966 were not available to the petitioner.

47. Thus, the submission of the learned counsel for the petitioner that the petitioner was entitled to automatic exemption under Section 29 of the Tamil Nadu Urban Land Tax Act 1966 cannot be accepted in respect of which exemption was granted under Section 27 (1) of the said Act.

48. Therefore, if at all, the petitioner was entitled for a conditional exemption under Section 27 of the Tamil Nadu Urban Land Tax Act 1966 which condition has been breached by the petitioner. The petitioner was earlier granted exemption under Notification G.O.Ms.No.2122 dated 27.10.1977 under Section 27 of the Tamil Nadu Urban Land Tax Act 1966.

49. In these cases, the exemption was granted under Section 27 (1) of the Tamil Nadu Urban Land Tax Act, 1966 vide G.O.Ms.No.2122 dated 27.10.1977. It was a conditional exemption. The petitioner was governed by the conditions of the exemption granted there under. At the time of grant of the exemption in 1977, the petitioner was in possession of 81 grounds and 2106 sq. ft. [81,2106 square feet] of lands in 9 different survey numbers.

50. The attempt of the petitioner has been to dilute lands right from 1977 as is evident from a reading of order dated 16.02.1979 of the Court. It decided to the violate the condition of the exemption by selling lands.

51. Earlier, by an order dated 16.02.1979 in O.S.No.439 of 1977, the Court had amended the Scheme for Management of the petitioner trust. As per the amended Scheme, no immovable property of the petitioner could be sold without previous approval of the General Body in a meeting duly convened for the purpose and with the subsequent approval from the court.

52. As is evident from a reading of order dated 04.05.1993 in C.S.No.114 of1993, an attempt was made by the then trustees of the petitioner to sell the entire extent of the land measuring 81 grounds and 2106 sq. ft. [81,2106 square feet] spread over in 9 different survey numbers and therefore C.S.No.114 of1993 was moved before the Court.

53. The Court granted a limited permission by its order dated 04.05.1993, for sale of only 10 grounds and 2,077 sq. ft. of land in Survey No.1687/1 comprised in Collector's

Certificate No.1559, Block No.34 on the banks of the Buckingham Canal off Venkatarangam Pillai Street, Triplicane to the said M/s.Theej Constructions.

54. However, the sale did not fructify and therefore a new buyer namely M/s.Srinivasa Enterprises agreed to buy 9 grounds and 1891 Sq. ft. forming part of ground and from premises known as “Shri Parthasarathy Swami Sabha” in “Shanker Gardens” bearing old Survey No.2486 and New Survey No.1687/1, comprised in Collector’s Certificate No.1559 in Block No.34 bearing part of Door No.36, Venkatrangam Pillai Street, Triplicane Madras 600005 situated in the Sub- Registration District of Triplicane.

55. In the counter filed by the respondent also, it is stated that the property that was sold to the said buyer was a fully built up property and a superstructure was in existence for about 90 years and there was no vacant land and that the structure was demolished and that a new building was constructed by the said purchaser later.

56. The petitioner has also filed a copy of an order dated 29.11.2015 of this Court in Application No.5088 of 2013 in C.S.No.439 of 1977, wherein, fresh permission was obtained by the developers for a joint development of the property of the petitioner with M/s.Sri Partha Builders represented by its proprietor to an extent of 10.33 grounds out of 46 grounds comprised in Survey No.1687, V.R Pillai Street, Triplicane, Chennai-5 indicating concerted effort of the trustees to dilute further land holdings of the petitioner. The petitioner has also filed a copy of an order dated 18.11.2014 of this Court in Application No.6083 of 2013 in C.S.No.439 of 1977, wherein, the trustees of the petitioner were again permitted to develop the property an extent of 217 sq. mts. Comprised in Old door No.39, New door No.89, R.S.No.1687/2A in block No.34, Venkatarangam Sub District of Triplicane and in the Registration District of Central Chennai as per the Joint Development Agreement dated 12.12.2013 entered with said M/s.Sri Partha Builders represented by its proprietor.

57. In these cases, the Assistant Commissioner (Urban Land Tax) had also filed a detailed report and it is pursuant to the aforesaid report, the impugned G.O.Ms.No. 459 dated 20.11.2013 came to be issued. Thus, the submission of the learned counsel for the petitioner that the land was sold as a distress sale as it was unable to stave off encroachments cannot be countenanced.

58. The exemptions granted under the provisions of the Income Tax Act, 1961 are different from the exemption granted either under Section 27 or under Section 29 of the provisions of the Tamil Nadu Urban Land Tax Act, 1966. Exemption granted under the provisions of the Income Tax Act, 1961 does not automatically inure into an automatic exemption under the provisions of the Tamil Nadu Urban Land Tax Act, 1966.

59. In these cases, the exemption that was granted to the petitioner was a conditional exemption and therefore, any violations of the conditions of the exemption granted to the petitioner vide G.O.Ms.No.2122 dated 27.10.1977 will attract the consequences provided under sub-clause (ii) to the said exemption notification.

60. G.O.Ms.No.2122 dated 27.10.1977 also specifically states that exemption will apply so long as the urban lands are specifically used for the purpose of the institution and if there is any violation in the use of or diversion of the income from the urban lands, the entire urban land tax shall be levied as provided in the Act.

61. There is no doubt Condition (ii) to G.O.Ms.No.2122 dated 27.10.1977 also has been violated by the petitioner as the petitioner had failed to comply with the requirements stipulated therein.

62. Though the land was sold in the year 1994, the petitioner did not inform the Government about the sale. It was incumbent on the part of the petitioner to have informed the Government about its proposal and the necessity for selling and entering into joint development agreement.

63. It was incumbent on the part of the petitioner to approach the Government in 1993 when it proposed to sell the land to M/s.Theeej Construction and later thereafter to M/s. Srinivasa Enterprises and obtain necessary modification of the exemption already granted to it under Section 27(1) vide G.O.Ms.No.2122 dated 27.10.1977.

64. In these cases, though the petitioner was issued with a notice pursuant to inspection report of the Assistant Commissioner of Urban Land Tax, the petitioner also failed to participate in the said proceeding and it is under these circumstances the Government issued G.O.Ms.No.515 dated 19.11.2004.

65. The fact that the petitioner was entitled to exemption under Section 27 (1) of the Tamil Nadu Urban Land Tax Act, 1966 in 1977 was not in dispute. Therefore, the decision of this court in Agasthiyar Trust Vs. The Government of Tamil Nadu, (1988) 1 MLJ 336 is of no consequence.

66. The decision of this Court rendered in Southern India Education Trust Vs. Government of Tamil Nadu represented by its Commissioner and Secretary, 1999 (3) CTC 711 is of no relevance as in the present cases, the petitioner was not entitled to exemption under Section 29 of the Tamil Nadu Urban Land Tax Act, 1966. Having alienated, the petitioner should have approached the government for a fresh exemption explaining the reasons as to why it was still entitled to

exemption.

67. In fact, after the said G.O.Ms.No. 515 dated 19.11.2004 was issued, the petitioner has entered into joint development agreement. Pursuant to which, it would have further alienated a portion of the common UDS in the left over the land in favour of the developer as is evident from the order dated 29.11.2013 in A.No.6083 of 2013 in C.S.No.439 of 1977. These aspects also would show further violations by the Petitioner.

68. Thus, knowing fully well of the consequences of breaching the terms of the exemption notification in G.O.Ms. 2122 dated 27.10.1977, the petitioner alienated lands in favour of 3rd parties twice. Therefore, I am of the view that the petitioner has not made out case for quashing either of the impugned G.O.Ms.No. 515 dated 19.11.2004 and G.O.Ms.No. 459 dated 20.11. 2013 or the demand notices.

69. Therefore, the petitioner is liable to tax in terms of Section 27 (2) read with Section 29-B as exemption granted G.O.Ms.2122 dated 27.10.1977 stood withdrawn with effect from the date of G.O.Ms.No.515 dated 19.11.2004.

70. Merely because the lands were alienated with the permission of the court on two occasions by itself would not ipso facto mean that the Government is also required to continue to exempt the petitioner under the provisions of the Tamil Nadu Urban Land Tax Act, 1966 without further modification. Therefore, this Court is not inclined to grant the reliefs as prayed for in the present writ petitions.

71. Therefore, the impugned G.O.Ms. demanding the tax from the petitioner are upheld. At the same time, the Form - VI of notices of demand of urban land tax impugned in W.P.Nos.13964 & 13965 of 2012 cannot be proceed as the impugned notices were issued before passing the G.O Ms. and as there is violation of principles of natural justice. At the same time, respondents are entitled to recover land tax from the date alienation of land after the issue G.O.Ms. 459 dated 20.11.2013.

72. Liberty is however given to the petitioner to approach the Government for grant of exemption by explaining the circumstances which would warrant exemption under Section 27(1) of theTamil Nadu Urban Land Tax Act, 1966, within a period of two months from the date of receipt of a copy of this order.

73. On such application being filed by the petitioner, the Government shall pass appropriate order, within a period of eight weeks from the date of filing of such application. There shall be a temporary suspension of recovery proceeding

for a period of eight weeks from the date of receipt of this order pending disposal of the petitioner's application/ representation for fresh exemption with retrospective effect from the date of respective sale/transfer of the land by the petitioner. Needless to state, the Government shall consider the request of the petitioner for grant of exemption a fresh under Section 27 of the Urban Land Tax Act, 1966 uninfluenced by the observation contained herein. However, such exemption shall be granted only in accordance with law under the provisions of the Tamil Nadu Urban Land Tax Act, 1966. If the petitioner does not make out a case for grant of exemption, the respondent shall proceed to recover the amount after expiry of such period of eight weeks after conveying their reasons in writing to the petitioner.

74. These Writ Petitions are disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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

2.The Special Tahsildar,
Mylapore, Triplicane Circle,
Chennai - 28.

3.The Commissioner Director,
Urban Land Ceiling and Urban Land Tax,
Chepauk, Chennai - 5.

4.The Secretary of Urban Land Tax Ceiling,
State of Tamil Nadu,
St. George Fort, Chennai - 9.

5.The Secretary,
Revenue [(ULC-III)(1)] Department,
State of Tamil Nadu, St. George Fort, Chennai -9.

+1cc to Mr.S.N.Kirubanandam, Advocate SR.No. 4362

+1 cc to Government Pleader Sr.No. 4208

W.P.Nos.13964 & 13965 of 2012,
35179 of 2013 and 25226 & 25178 of 2015
and M.P.Nos.1 & 1 of 2012, 1 of 2013
and 1, 1, 2 & 2 of 2015

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A.SR(09.03.2021)