IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

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

WP Nos.14466 & 14467 of 2015
and MP No.2+2 and 3+3 of 2015

1. Vetri Vikaas Girls Higher Secondary School, Keeranoor, Rasipuram Taluk, Namakkal District, Rep. By its Secretary, C.Balasubiramanian. ...Petitioner in W.P.No.14466/15

2. Vetri Vikaas Boys Higher Secondary School, Keeranoor, Rasipuram Taluk, Namakkal District, Rep. By its Secretary, C.Balasubiramanian. ...Petitioner in W.P.No.14467/15

Vs

1. State of Tamil Nadu,
   Rep. By its Secretary to Government,
   Rural Development Department,
   Fort St. George, Chennai - 600 009.

2. The President,
   Thottiyavalasu Panchayat,
   Rasipuram Taluk,
   Namakkal District.

3. The Block Development Officer,
   (Village Panchayat),
   Vennandhur,
   Namakkal District. ...Respondents in both WPs.

PRAYER in WP No.14466 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the 2nd respondent issued in his proceedings comprised in Na.Ka.No.0001/2015 dated 21.4.2015 and quash the same.

PRAYER in WP No.14467 of 2015: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, calling for the records of the 2nd respondent issued in his proceedings comprised in Na.Ka.No.0001/2015 dated 21.4.2015 and quash the same.

For Petitioners in both WPs. : Mr.Maikandan for Mr.V.Vedachalam

For Respondents in both WPs. : Mr.V.Veluchamy (for R1) Government Advocate

Mr.M.Digvijaya Pandian (for R2 & R3)

C O M M O N O R D E R

The assessment of Property Tax and demand notices to pay the Property Tax, issued by the 2nd respondent in proceedings dated 21.04.2015, in respect of petitioner schools viz., Vetri Vikaas Girls Higher Secondary School and Vetri Vikaas Boys Higher Secondary School, are under challenge in these writ petitions.

2. The petitioner institution was formed by Association of persons in order to impart education to the rural students in and around the area of Namakkal District. The 2nd respondent served the notices dated 27.01.2012 calling upon the petitioners to pay Property Tax and the said notices were challenged by the petitioners in WP Nos.12273 & 12274 of 2012 and the said writ petitions were disposed of on 18.03.2015, directing the 2nd respondent, to provide an opportunity to the writ petitioners to submit their objections, regarding the demand notices. Pursuant to the orders passed by this Court, the petitioners submitted their explanation/objections regarding the demand of property tax in respect to the buildings used for educational purposes. However, the objections submitted by the petitioners were not considered and again the property assessment orders were passed raising the demand. Thus, the petitioners are constrained to move the present writ petitions.

3. Learned counsel appearing on behalf of the writ petitioners mainly contended that the educational institutions are exempted under the provisions of the Tamil Nadu Panchayats Act, 1994. Since, the educational institutions not being commercial in nature, the authorities cannot levy Property Tax and therefore, the very assessment of Property tax and demand made consequently, are untenable.

4. The learned counsel for the petitioners relied on the judgment of the Hon'ble Divison Bench of this Court dated 13.09.2019 passed in WP No.18008 of 2018 etc. The learned

counsel relied on paragraph No.45, which reads as follows:

> "45. In view of the above, challenge to Act 6 of 2018 i.e. Tamil Nadu Municipality Laws (Second Amendment) Act, 2018, cannot be upheld and that the same is rejected. Writ Petitions are dismissed. No Costs."

It is contended that as per the said judgment, exemptions are to be granted in favour of the writ petitioners, from payment of Property Tax.

5. The learned counsel appearing for the petitioners further relied on the judgment of the Hon'ble Supreme Court in the case of Government of Kerala & Anr. Vs. Mother Superior Adoration Convent dated 01.03.2021 passed in Civil Appeal No.202 of 2012. Following portion of the said judgment is relied upon .

> "7.....Therefore, necessarily, the students have to depend on hostel accommodation to pursue their studies. Colleges will not get students if they do not provide hostel accommodation to students near to the College. Therefore, hostel buildings are constructed by educational institutions to attract students to their institutions. Many educational institutions provide only basic facilities like building, electricity and water connections for hostels and in fact, students are running mess on sharing basis. So much so, the States contention that hostels attached to educational institutions are commercial ventures intended to make profit, in our view, is unacceptable. In order to consider whether hostel provided by an educational institution is for educational purpose or not, we have to consider the consequences if such educational institution does not have hostel facility to provide accommodation to its students."

Paragraph No.25 of the judgment relied upon reads as under:

> "24. This being the case, it is obvious that the beneficial purpose of the exemption contained in Section 3(1)(b) must be given full effect to, the line of authority being applicable to the facts of these cases being the line of authority which deals with beneficial exemptions as opposed to exemptions generally in tax statutes. This being the case, a literal formalistic interpretation of the statute at hand is to be eschewed. We must first ask ourselves what is the object sought to be achieved by the provision, and construe the statute in accord with such object. And on the assumption that any ambiguity arises in such construction, such ambiguity must be in favour of that which is exempted. Consequently, for the reasons given by us, we agree with the conclusions

reached by the impugned judgments of the Division Bench and the Full Bench.”

6. It is contended that the Hon'ble Supreme Court of India also ruled that the buildings utilised for educational purposes and for the purpose of the students studying in institutions, are to be exempted from payment of Property tax. Thus, the present impugned orders are liable to be set aside.

7. The learned counsel appearing on behalf of the respondents 2 and 3 disputed the said contentions by stating that the issue raised in the present writ petitions, is no longer res integra. The Hon'ble Division Bench of this Court has decided the issue by considering the Amendment Act and based on the judgment, every educational institution are paying the Property Tax after the judgment of the Hon'ble Divison Bench. A learned Single Judge also considered the issue and passed orders in batch of writ petitions on 01.08.2018 in WP Nos.5816 to 5818 & 5923 to 5925 of 2011 and the relevant paragraphs are extracted hereunder

> “2. The prayer sought for in these writ petitions was considered by the First Bench in Writ Appeal Nos.2152 of 2011 Batch, dated 17.06.2017 [Maharaja College of Arts and Science, Coimbatore v. The State of Tamil Nadu, Rep. by its Secretary to Govt. Rural Development and Panchyat Raj Department, Chennai - 9 and others] and all the Writ Appeals were dismissed. Subsequently, some of the writ petitioners have filed appeals before the Honb'le Supreme Court wherein an interim order has been granted and the appeals have been entertained subject to the petitioners' depositing with the Panchayats concerned the entire arrears of property tax up-to-date along with an additional amount of Rs.50,000/- as compensation.
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> 3...
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> 4...
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> 5. Accordingly, the Writ petitioners are directed to clear the entire arrears of property tax along with Rs.50,000/- as compensation payable to Panchayat, within eight weeks from the date of receipt of a copy of this order. If this condition is complied with, the petitioners/respondents shall await the decision of the Hon'ble Supreme Court and take appropriate action is accordance with the decision of the Hon'ble Supreme Court made in S.L.P.No.7672/2012 etc. batch. However, if the petitioners fail to comply with the above condition within the time stipulated, the writ petitions would stand dismissed, following the decision of the Hon'ble Division Bench in W.A.No.2152/2011 etc. batch, dated 17.06.2017.”

8. The learned counsel appearing for the respondents 2 and 3 reiterated that pursuant to the Amendment, the respondent-Panchayat is bound to collect Property Tax in order to provide public services. This being the position, the writ petitions have to be dismissed.

9. Considering the arguments, this Court is of the considered view that as far as the educational institutions are concerned, the Property Tax assessment made and the consequential demand notices issued, were challenged and the claim of the educational institutions were rejected by the Courts. As of now, the educational institutions are liable to pay Property Tax as applicable to the Panchayats.

10. As far as the judgment relied on behalf of the petitioners is concerned, the Hon'ble Division bench in its judgment dated 13.09.2019 held as follows in paragraph Nos.45 and 46.

> "45. In view of the above, challenge to Act 6 of 2018 i.e., Tamil Nadu Municipality Laws (Second Amendment) Act, 2018 cannot be upheld and that the same is rejected. Writ petitions are dismissed. No Costs.
>
> 46. This Court is not going into the demanded quantum of tax in the notices issued by various Corporations on various schools. Competence in demanding tax is upheld. It is open to the institutions to file appropriate petitions challenging the demand notices, in accordance with law. Interim order, restraining the municipality authorities from taking any coercive steps, stands vacated. Consequently, other connected writ miscellaneous petitions are closed."

Paragraph No.45 of the judgment has been erroneously interpreted by the learned counsel for the petitioners as if the Hon'ble Division Bench held that the Tamil Nadu Municipality Laws (Second Amendment) Act, cannot be upheld. That is not the observation made by the Hon'ble Division Bench. In fact, Paragraph No.45 clarifies that "in view of the above, challenge to Act 6 of 2018, cannot be upheld".

11. Therefore, 'the challenge cannot be upheld', is the findings of the Hon'ble Division Bench and in paragraph No.46, the said decision is clarified by the Hon'ble Division bench stating that 'Competence in demanding tax is upheld'. Therefore, the Amendment Act was upheld by the Hon'ble Division Bench and the competence of Panchayat in demanding the tax, is also upheld.

12. Based on the said judgment, the Hon'ble Single Judges have also passed other judgments following the same and the Property Tax assessment orders are passed in respect of other institutions and the Panchayats are collecting the tax as applicable.

13. Regarding the judgment of the Hon'ble Supreme Court cited by the petitioners, is concerned, the case filed before the Hon'ble Supreme Court of India is related to the Kerala Building Tax Act, 1975. The question considered in paragraph No.7 of the judgment is that whether the hostel facility to students provided by other educational institutions, which are not compulsorily required under the educational regulations to provide accommodation to students, is an educational purpose qualifying the hostel buildings for tax exemption?. Therefore, the said facts and circumstances could not be applied for the present writ petitions on hand.

14. In view of the fact that the issue regarding assessment of Property Tax and the demand of Property Tax is upheld, the petitioners are liable to pay Property Tax as demanded . As far as the competence of the Panchayat is concerned, it is upheld and the respondents are empowered to assess the Property Tax and issue demand notices and collect the property Tax from the educational institutions.

15. The learned counsel for the respondents 2 and 3 brought to the notice of this Court that the petitioner institution has not paid the Property Tax for many years and there are huge arrears of tax.

16. In this regard, the petitioners are bound to pay the Property Tax arrears also, failing which, the respondents are bound to recover the same by following the procedures, as contemplated under law.

17. With these observations, the writ petitions stand dismissed. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
   State of Tamil Nadu,
   Rural Development Department,
   Fort St. George, Chennai - 600 009.

2. The President,
   Thottiyavalasu Panchayat,
   Rasipuram Taluk,
   Namakkal District.

3. The Block Development Officer,
   (Village Panchayat),
   Vennandhur,
   Namakkal District.

+1cc to Mr.M.Digvijaya Pandian, Advocate, S.R.No.39595
+1cc to the Government Pleader, S.R.No.39723

WP Nos.14466 & 14467 of 2015

VBM(CO)
RGA(01/09/2021)