IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.3833 of 2021
and
W.M.P.Nos.4390 & 4389 of 2021
(Through Video Conferencing)

Thatha Elayalwar Chetty
Charities Rep.by its Managing Director Trustee,
Mr.A.Sudhakar,
No.46, Narayanan Mudali Street
George Town, Chennai-79. ... Petitioner

Vs

1. The Commissioner of Corporation,
Ribbon Buildings,
Greater Chennai Corporation,
Chennai-600 003.

2. The Assistant Revenue Officer,
Zonal Office V, Ward 57,
Greater Chennai Corporation,
No.61. Basin Bridge Road,
Chennai- 600 021. ... Respondents

Prayer: 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 2nd respondent in 05-057-04381-000 dated 05.02.2021.

For Petitioner : Mr.S.N.Kirubanandam

For Respondents : Ms.S.Vaitheeswari
Standing Counsel

ORDER

This writ petition has been filed for quashing the demand notice dated 05.02.2021 demanding a sum of Rs.83,327/- as property tax for the period of second half of year 2019-20.

2. It is the case of the petitioner that the petitioner is a charitable institution and was created under a scheme decree of this Court in CS No.189 of 1992 vide judgement order dated 07.11.2022.

3. Learned counsel for the petitioner further submits that the petitioner has about four properties in George Town which have been rented out and the proceeds of the rent from all the properties are used for charitable purposes and therefore, the petitioner is exempted from payment of property tax under the provisions of the Chennai City Municipal Corporation Act, 1919.

4. Learned counsel for the petitioner further submits that as per Section 101 of the said Act, the petitioner is entitled for an exemption and to that effect and the petitioner has also filed an application before the respondents for exempting the petitioner from payment of property tax. It is submitted that though the petitioner has filed an application on 30.12.2020, the respondents have issued the impugned demand notice dated 05.02.2021.

5. Learned counsel for the petitioner has placed reliance on the following three decisions of this Court opposing the prayer for grant of relief which reads as under:-

> "(i) Agasthiyar Trust Vs. The Govt. of Tamil Nadu(1198) 1 MLJ 336.
>
> (ii) Southern India Education Trust Vs. The Government of Tamil Nadu (1999) III CTC 711.
>
> (iii) Gurukul Lutheran Theological College and Research Institute Vs. The Commissioner Corporation of Chennai and Anr.W.A.Nos.582, 583, 584, 585, 587, 588, 589 and 590 of 2020.

6. The Learned Counsel for the Respondents submits that there is no merits in the present writ petition.

7. It is submitted that the petitioner has ought to have challenge the aforesaid demand notice in the manner known to law by filing a statutory appeal before the Taxation Tribunal under Rule 14 of the Taxation Rules in schedule IV of the Act. On this score also it is submitted that the writ petition is devoid of merits and liable to be dismissed.

8. Learned counsel for the respondents submits that the decision of this Court in Agasthiyar Trust Vs. The Govt. of Tamil Nadu (1198) 1 MLJ 336 is to be distinguished on facts inasmuch as it was rendered in the context of Tamil Nadu Urban Land Tax Act, 1966 and in the context of Section 12 of the Income Tax Act, 1961.

9. Learned counsel for the petitioner submits that even if the objective of the petitioner trust is charitable in nature, question of granting exemption to the building of petitioner under Section 101 (c) of the said Act does not arise. Therefore, it is submitted that the writ petition is liable to be dismissed.

10. Learned counsel for the respondents also submitted that exemption under Section 101 was restricted further in the year 2018 by amending sub-Clause (c) to Section 101 and therefore, it is submitted that writ petition is devoid of merits. Finally learned counsel for the respondents also submitted that the petitioner has been paying property tax all along 1993-94 and therefore, on this score also the writ petition is liable to be dismissed.

11. By way of re-joinder, learned counsel for the petitioner submitted that the petitioner has also paid the disputed tax for the period of sum of Rs.83,327/- during the pendency of the present writ petition to prove its bona fide.

12. Learned counsel for the petitioner submits that the aforesaid payment was "under protest" and therefore, the payment by the petitioner cannot be to the prejudice of the petitioner's right to claim exemption under Section 101 of the said Act.

13. Heard learned counsel for the petitioner and learned standing counsel for the respondents and perused the demand notice, scheme decree and the decision cited by the learned counsel for the petitioner and the respondents.

Section 101 of the Chennai City Municipal Corporation Act, 1919 is categorical. Relevant Portion of Section 101 (C) of the Chennai City Municipal Corporation Act, 1919 which reads as under:-

> "(c) Building used for education purposes including hostels attached thereto and places used for the charitable purpose of sheltering the destitute or animals and orphanages, homes and schools for the deaf and dumb, asylum for the aged and fallen women and such similar institution that run purely on philanthropic lines as are approved by the Council.
>
> Provided that the buildings used for educational purspose by the Government aided institutions for conducting self-financing courses shall be subject to levy of property tax"

14. Prima facie it appears that the petitioner is not eligible for exemption under Section 101 of the said Act is categorical. The reading of the provision as extracted above indicates that the petitioner is not using for buildings in scheme decree in C.S.No.189/1922 for the purpose specified in the Scheme. It is however open for the petitioner to approach the respondents with appropriate representation either for granting an exemption under any other provisions of the Act or approach the legislature for exempting trust like petitioner which are engaged in charitable activities. It is for the respondents to consider whether the petitioner is eligible for exemption or not.

15. In the light of the discussions, this writ petition is disposed by directing the respondents to consider petitioner's representation dated 30.12.2020 on merits and in accordance with law within a period of three months from the date of receipt of copy of this order.

16. Petitioner is also given liberty to approach the appropriate authority to bring a suitable amendment to the provision of the Act for exemption to charitable institution likewise of petitioner, which are dependent on the income from the immovable property for its charitable activities contemplated under the scheme decree.

17. Though it was submitted that amount of tax has been remitted, no views are expressed on the same in absence of any documents to substantiate the same.

The writ petition stands disposed of in terms of the above observations, consequently connected writ miscellaneous petitions are also closed. There shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

nst

To

1. The Commissioner of Corporation,
   Ribbon Buildings,
   Greater Chennai Corporation,
   Chennai-600 003.

2. The Assistant Revenue Officer,
   Zonal Office V, Ward 57,
   Greater Chennai Corporation,
   No.61. Basin Bridge Road,
   Chennai- 600 021.

+1cc to M/s.S.N.Kirubanandam, Advocate Sr.64064

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rp[co]
srg 23/12/2021