IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.22501 OF 2013
AND
M.P.NO. OF 2013

Arulmighu Subramaniaswamy Thirukoil,
Represented by its Joint Commissioner / Executive Officer,
Tiruttani, Tiruvallur District. ...Petitioner

-vs-

1. The Secretary to Government of Tamil Nadu,
   Municipal Administration and Water Supply Department,
   Fort St.George,
   Chennai - 600 009.

2. The Commissioner,
   Tiruttani Municipality,
   Tiruttani. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records of the first respondent in his Letter No.27366/NaNi.4/2012-2 dated 23.04.2013 and quash the same with a consequential direction to the respondents to grant exemption from payment of property tax in respect of the cottages exclusively used for religious and charitable purposes and library building named as Dr.Radhakrishnan Library exclusively used for religious and charitable purposes.

For Petitioner : Mr.J.Ram

For Respondents : Mrs.Akila Rajendran
Government Advocate for R1
Mr.P.Srinivas
Standing counsel for R2

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the first respondent in his Letter No.27366/NaNi.4/2012-2 dated 23.04.2013 and quash the same with a consequential direction to the respondents to grant exemption from payment of property tax in respect of the cottages and library building named as Dr.Radhakrishnan Library exclusively used for religious and charitable purposes.

2. The petitioner is a famous Temple being administered by the Hindu Religious and Charitable Endowment Department under the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The petitioner Temple is having various Choultries like cottages, buildings, libraries, tonsuring sheds and the places are sheltered for performing functions like ear boring ceremonies etc.,.

3. In respect of those buildings, the second respondent Municipality seems to have levied property tax.

4. However, the petitioner Temple by citing Section 83 of The Tamil Nadu District Municipalities Act, 1920 in short 'The Municipalities Act' sought for an exemption for those buildings from the purview of property tax from the second respondent Municipality and since the same was not given, the petitioner in the earlier occasion filed a Writ Petition in W.P. No. 15169 of 2011. In the said Writ Petition, after hearing both parties, a learned Judge of this Court, by order dated 28.10.2011 passed the following order:

> "5. Heard learned counsel for the petitioner as well as learned Government Advocate (Writ) appearing for the respondents.
>
> 6. A reading of the order now impugned shows that the first respondent considered the claim of the petitioner with reference to the buildings under the control of the temple being given on lease on commercial basis. The order impugned before this Court clearly pointed out that the temple had been fixing the rent for the lodges with all modern facilities like Air Conditioner given for occupation by the devotees. It further points out that in view of the offering of all the modern facilities like Air Condition, rent had been increased by ten times. Thus, these cottages would not fall under choulteries which offered free services. Considering the fact that the tax paid by the temple constituted a major portion of the revenue to the Municipality and the same requires for meeting out the public expenses, the question of granting exemption does not arise.
>
> 7. Learned counsel appearing for the petitioner pointed out that contrary to the submission of the respondents herein, the petitioner is not charging any money for tonsuring in the specified areas reserved for that. Consequently, to that extent the question of

rejection of the claim for exemption does not arise.

8. I do not find any good ground to accept the plea of the petitioner seeking exemption or interfering with the order passed by the first respondent. Section 83 of the Tamil Nadu District Municipalities Act contains the provisions on exemption to various categories of places. Section 83 (1)(a) relates to places set apart for public worship and Sub clause (b) on choultries on which no rent is charged. The said provision read as under:

> "Choultries for the occupation of which no rent is charged and choultries the rent charged for the occupation of which is used exclusively for charitable purposes."

9. The only provision which reserves a discretion to grant exemption is the one given under Sub clause (5) to Section 83 which reads as under,

> "83(5) The municipal council may, by a general resolution, exempt any building or land from the property tax-
>
> (i) if the annual value of the same does not exceed a sum specified in the said resolution, such sum not being greater than one hundred and eighty rupees; and
>
> (ii) the proprietor does not own any other building or land assessed to the property tax and is not liable to profession or income-tax."

10. A reading of Sub Clause (5) shows that it can have no relevance to the facts herein. Thus, the only provisions which will have bearing to the facts herein would be sub clause (b) of Section 83(1) of the Act. Given the fact that the cottages and other shops are run by the temple on commercial basis, rightly the respondents considered this aspect to reject the claim of the petitioner herein. Even though learned counsel contended that whatever amount collected for the cottages and other places are in the nature of maintenance charges, yet there is nothing to suggest that the charges collected are used for charitable purposes only as given under Sub Clause (b). Thus in the absence of any material to show that the choultries are rent free or for that matter rent collected was used exclusively for charitable purposes, the question of extending the exemption provision does not arise.

11. Leaving aside the contention of the respondent that the property tax collected from the petitioner herein constituted major portion of the revenue to the Municipality which is required for

spending on public facilities and purposes, when the properties of the temple are used for economic benefits through commercial exploitation, the claim of the petitioner does not merit any consideration.

12. It is a matter of relevance herein to say that in the proceedings dated 29.07.2008, the Municipality pointed out that in case of voluntary payment, there shall be a discount also. In the circumstances, going by the provisions of Section 83 and exemption provision being a matter of discretion, which in this case, was rightly exercised, I do not find any ground to accept the plea of the petitioner.

13. In the result, the writ petition is dismissed. No costs. Consequently, connected MP is also dismissed.

14. As regards sheds maintained for tonsuring and ear boring ceremonies, there is nothing on record to show that they are maintained by temple. Learned counsel for the petitioner however made a submission that in respect of choultries and tonsuring places, which are run on charitable basis, the claim for exemption may be considered under the provisions of the Act. Considering the objection from the respondents that those places are given through annual auction, this Court cannot automatically give any such direction on this request. It is open to the petitioner to make such a representation if it so feels pointing out that the places, which are run on charity, fit in within the requirement of law. If any such application is made, it is open to the first respondent to consider the same and pass orders accordingly."

5. Pursuant to the observations made in para 14 of the said order referred above, the petitioner Temple has given further request on 26.08.2012 to the second respondent Municipality for giving exemption from the purview of the property tax demand in respect of the buildings referred above. The said request having been considered was turned down by the second respondent Municipality vide his proceedings dated 06.09.2012. Felt aggrieved over with the same, the petitioner Temple preferred an appeal to the first respondent, i.e., State Government under Section 36 (1)(a) of the Tamil Nadu District Municipalities Act. Having considered the said appeal filed by the petitioner Temple, the first respondent also has rejected the same vide proceedings dated 23.04.2013. Challenging the same, the present Writ Petition has been filed.

6. Heard Mr.J.Ram, learned counsel appearing for the petitioner who would point out that, insofar as the exemption

clause provided under Section 83 of The Municipalities Act, whatever the buildings being used as Choultries for the purpose of devotees who come everyday to the Temple can very well be exempted as either no rent is being collected from the devotees who used Choultries or if at all, any rent is collected from the devotees, the same would be utilized for the charitable purposes as has been contemplated under Section 83(1)(b) of The Municipalities Act.

7. When that being the position, the plea raised by the petitioner Temple ought to have been considered by the second respondent Municipality or atleast by the first respondent in the said appeal preferred by the Temple. However, without giving any opportunity to the petitioner Temple or call for the supporting documents or records from the petitioner Temple to substantiate their claim that, the Choultries are being used only as charitable purposes or those Choultries are being used by the devotees free of cost, i.e., without paying any rent to the Temple, since the order impugned has been passed by the first respondent on 23.04.2013, the same is liable to be interfered with, he contended.

8. Per contra, Mrs.Akila Rajendran, learned Government Advocate appearing for the first respondent as well as Mr.P.Srinivas, learned Standing counsel appearing for the second respondent Municipality would contend that, no doubt, there has been an exemption provision given in Section 83 of The Municipalities Act. However, whether the petitioner Temple is eligible to seek such an exemption is a question. In this context, the learned counsels further elaborated their arguments stating that, the very same issue already been raised by the petitioner in the first round of litigation in the aforestated Writ Petition, where after having considered these points, the Writ Court by order dated 28.10.2011 passed an order, where it have clearly stated at para 10 that, whatever amount is collected for the cottages or other places are in the nature of maintaining charges according to the petitioner Temple. However, there is no proof to suggest that, the charge collected or being used for charitable purposes only as given under sub clause (b) of Section 83(1) of The Municipalities Act. Therefore, in the absence of any material to show that, the Choultries are rent free or for that matter rent collected was used exclusively for charitable purposes, the question of extending the exemption provision does not arise. The said observations and what has been held in this regard by the learned Judge in the first round of litigation in para 10 of the said order referred above squarely applies to the petitioner's case in the present consideration. Therefore, unless and until, the petitioner comes forward to establish the case with documents to show that, the charges collected are used for charitable purposes or no charges

is being collected from the persons or the devotees who used the Choultries or Cottages of the Temple, the petitioner Temple cannot seek for exemption within the meaning of Section 83 of The Municipalites Act, they contended.

9. I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

10. As has been rightly pointed out by the learned counsel appearing for the respondents in the first round of litigation, where the similar plea was raised by the petitioner, the learned Judge having considered all those aspects vide order dated 28.10.2011 as referred above in the matter of Arulmigu Subramaniaswamy Thirukkoil v. The Executive Officer, Tiruttani Muncipality and another has held so that, the question of extending the exemption provision does not arise in the case of the petitioner, unless and until, the petitioner comes forward to substantiate that, the charges collected from the Choultries or the Cottages are being used for charitable purposes only or the said Choultries or Cottages are let in for use of devotees free of cost or free of rent. If these two aspects have not been satisfied, the petitioner Temple cannot seek exemption under Section 83(1)(b) of The Municipalites Act.

11. The said view expressed by the learned counsels appearing for the respondents is appealing in this case, because the language used in Section 83(1)(b) has made is clear that, the Choultries for the occupation of which no rent is charged and Choultries, the rent charged for the occupation of which is used exclusively for charitable purposes, that means, there are two categories of Choultries, one is that, there is no rent charged for the Choultries and another category is that, even though rent is charged for the occupation of the Choultries, it is used exclusively for charitable purposes.

12. Therefore, the responsibilities to satisfy that, the rent or charge being collected from the devotees for the Choultries are exclusively used for charitable purposes lies on the Temple authorities' shoulders and therefore, in order to substantiate that, the Temple should have filed necessary documents and books of accounts either before the second respondent Municipality Authority or atleast before the first respondent State Government at the time of considering the appeal filed by the petitioner.

13. In the absence of such documents to substantiate their contention, the petitioner cannot expect that, they would get an order in their favour for getting exemption.

14. Therefore, the reasons cited by the first respondent in the impugned order dated 23.04.2013 rejecting the said appeal filed by the petitioner inasmuch as, no such document had been admittedly filed by the petitioner is concerned would be sustained. Therefore, this Court cannot go into the merits of that rejection at this juncture.

15. But at the same time, since the exemption provision available in The Municipalities Act, i.e., under Section 83, where 83(1)(b) has made it clear that, if the person who seeks such exemption is able to substantiate that, the rent or charge collected from the Choultries are being utilized for the purposes of charity that, such kind of exemption can be sought for and it is possibly can be obtained by the persons who seeks such exemption.

16. In view of such statutory provision which is enabling the persons like the petitioner who is admittedly the Temple doing charitable work, such kind of substantiation would be possible at the hands of the petitioner in filing necessary documents to the satisfaction of either the second respondent or the first respondent.

17. However, in this case, since the rejection has already been made by the second respondent, as against which, the appeal has been filed before the first respondent who also rejected the appeal through the impugned order which for the reasons stated above need not be at this juncture interfered with by this Court. However, what this Court feels is that, the petitioner can be given a liberty to prefer a review against the order impugned before the first respondent where along with the review to be filed in this regard, the petitioner Temple can file necessary documents with books of accounts to substantiate their contention that, the Choultries being used only for charitable purposes without being collecting any rent or charge or even assuming that, the rent or charge is collected for some part of the Choultries, the same is being utilized for charitable purposes alone. If such substantiation is possible from the petitioner Temple, the same, in the considered opinion of this Court, can be considered by the first respondent for the said purpose and the order impugned can very well be reviewed.

18. In that view of the matter, this Court feels that, this Writ Petition can be disposed of with the following orders:

> "(i) That the impugned order as such cannot be interfered with by this Court, however liberty can be given to the petitioner, under which, the petitioner Temple can very well file a review against the impugned order within a period of four

weeks from the date of receipt of a copy of this order.

(ii) Along with the said review application to be filed before the first respondent against the impugned order, the petitioner shall annexe the necessary documents and books of accounts to establish that, if at all any charge or fee is being collected for letting out the Choultries, the same is being utilized only for charitable purposes and not for any commercial nature or purposes.

(iii) If such an application for review as indicated above is filed within a time as indicated, by the petitioner Temple, the same shall be considered by the first respondent State Government after giving an opportunity of being heard to the petitioner as well as the second respondent Municipality and decide the same on merits and in accordance with law especially in the context of the aforestated discussions and pass orders within a period of six weeks thereafter."

19. With these directions, this Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

vji

To

1.The Secretary to Government of Tamil Nadu,
Municipal Administration and Water Supply Department,
Fort St.George,
Chennai - 600 009.

2.The Commissioner,
Tiruttani Municipality,
Tiruttani.

+1cc to Mr.P.Srinivas, Advocate Sr.No.58423
+1cc to Mr.P.Gopalan, Advocate Sr.No.58464

W.P.No.22501 of 2013 and
M.P.No.1 of 2013

GPL(CO)
RVM(14/02/2022)