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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.09.2021

CORAM

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

W.P. Nos. 8096 and 14308 of 2011

St.Joseph Middle School
Represented by the Superintendent of Schools
Rev.Fr.John Bosco Paul,
Diocesan Educational Commission,
Mary Palace, 63
Thammannan Road, Salem - 9 ... Petitioner in W.P. No. 8096 of 2011

St.Mary's Middle School,
Represented by the Superintendent of Schools
Rev.Fr.John Bosco Paul,
Diocesan Educational Commission,
Mary Palace, 63
Thammannan Road, Salem - 9 ... Petitioner in W.P. No. 14308 of 2011

..vs..

1. The Government of Tamil Nadu
   Represented by its Secretary,
   Rural Development and Panchayat Raj Department,
   Fort St.George,
   Chennai - 600 009.

2. The District Collector
   Namakkal District,
   Namakkal. ... 1st and 2nd Respondents in both W.Ps'

3. The Block Development Officer (Village Panchayat)
   Block Development Office,
   Kabilar Malai, Paramathi Taluk,
   Namakkal District - 637 201.

4. The President / Executive Authority,
   Perunkurichi Panchayat,
   Paramathi Taluk,
   Namakkal District - 637 201. .. 3rd and 4th Respondents in W.P. No. 8096 of 2011

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5. The Block Development Officer (Village Panchayat)
Block Development Office,
Rasipuram Taluk,
Namakkal District - 637 408.

6. The President / Executive Authority,
Kakkaveri Panchayat
Rasipuram Taluk.,
Namakkal District - 637 408. ... 3rd and 4th Respondents in W.P. No. 14308 of 2011

Prayer in W.P. No. 8096 of 2011: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Demand Notice dated 23.12.2010, for the payment of Rs.10,073/- as House Tax for Door No.139 in Ward No. IV in Form I, vide Assessment No.905, on the file of the fourth respondent and quash the same, directing the respondents to grant statutory exemption from the payment of House Tax in respect of the petitioner Aided School, as per the notification dated 05.03.2008 vide G.O.Ms.No.38, Rural Development and Panchayat Raj, Amending Rule 15(c) of the Tamil Nadu Panchayats Act, 1994.

Prayer in W.P. No. 14308 of 2011: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned Demand Notice dated 24.12.2010, for the payment of Rs.8793/- as House Tax for Door Nos.3F in Ward No.III in Form I, vide Assessment No.2118, on the file of the fourth respondent and quash the same, directing the respondents to grant statutory exemption from the payment of House Tax in respect of the petitioner Aided School, as per the notification dated 05.03.2008 vide G.O.Ms.No.38, Rural Development and Panchayat Raj, Amending Rule 15(c) of the Tamil Nadu Panchayats Act, 1994.

For Petitioners in both W.Ps' : Dr.FR.Xavier Arulraj
Senior Counsel
Assisted by Mrs.A.Arulmary

For Respondents in both W.Ps' : Mr.V.Veluchamy
Government Advocate for R1to R3

Mr.R.Ravichandran for R4

C O M M O N O R D E R

The Writ Petitions on hand are filed to quash the demand notice dated 23.12.2010 and 24.12.2010 for payment of

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Rs.10,073/- and Rs.8793/- as house tax for the premises owned by the petitioners and further direction is sought for to grant statutory exemption from payment of house tax in respect of the petitioners aided Schools as per the notification dated 05.03.2008, vide G.O.Ms.No.38 Rural Development and Panchayat Raj Department, amending Rule 15(c) of the Tamil Nadu Panchayats Act, 1994.

2. The petitioner in W.P. No. 8096 of 2011 is St.Joseph Middle School is an aided Tamil Medium Middle School, managed by the Salem Diocese Society. It is a registered society under the Societies Registration Act. The petitioner is running the school with an object of rendering educational service to the people in that locality. The school is situated in a total extent of 1 acre of land and the School has a two storied pucca building constructed and has a total built-in area of 2,516.81 sq.ft. in the ground floor and 2,516.81 sq.ft in the first floor. That apart, there is a tiled roof building of an extent of built-in area of 1,313.25 sq.ft. Thus, the entire campus located in the fourth respondent / Panchayat has a total built-in area of 6,346.87 sq.ft in respect of the petitioner's School.

3. The petitioner in W.P. No. 14308 of 2011 is St.Mary's Middle School is an aided Tamil Medium Middle School, managed by the Salem Diocese Society. It is a registered society under the Societies Registration Act. The petitioner is running the school with an object of rendering educational service to the people in that locality. The school is situated in a total extent of 0.92 acre of land and the School has a two storied pucca building constructed and has a total built-in area of 7,353 sq.ft.

4. The learned Senior counsel appearing on behalf of the petitioners mainly contended that an amendment was brought in by the Government of Tamil Nadu amending Rule 15(1)(c) of the Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999. The amendment was notified in the Tamil Nadu Government Gazette on 05.03.2008. Accordingly, the Rule 15 is held as follows:

> "In the said Rules, in Rule 15:-
>
> (1) for clause (c), the following clause shall be substituted, namely:-
>
> "(c) buildings used for educational purposes including hostels and libraries run by the Government or local bodies and institutions aided by the Government and public buildings used for charitable purpose of sheltering the destitutes or animals;";
>
> (2) in the first proviso, for the expression "clauses (a) and (c)", the expression "clause (a)" shall be substituted;

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3. after the second proviso, the following proviso shall be inserted, namely:-

"Provided also that the buildings used for educational purposes by Government - aided institutions, for conducting self-financing unaided courses shall be subject to levy of house tax":

5. Relying on the said amendment, the learned Senior counsel reiterated that the aided Schools are exempted from payment of house tax and therefore, the petitioners being aided Schools, the impugned demand notices issued is in violation of the amended Rules 15 of the Tamil Nadu village Panchayats (Assessment and collection of Taxes) Rules. An exemption is granted for the aided Schools and the general exemption is contemplated under section 176 of the Tamil Nadu Panchayats Act is also to be read along with the Rules and accordingly, the petitioners are entitled for an exemption from payment of house tax and thus, the impugned demand notices are to be set aside. The petitioners are not conducting any self-financing unaided courses and they are aided middle Schools and thus, fall under the exemption class. As per the amended rules, the petitioners are entitled for an exemption from payment of house tax.

6. The learned Senior Counsel for the petitioners made a submission that the Hon'ble Full Bench has considered the pre-amended rules. However, the principles laid down is applicable to the amended rules also as even in respect of the pre-amended rules. The Hon'ble Full Bench held that the word " Shall" used in Rule 15 has to be read as "may" to give effect to the said rule of exemption. However, this Court has also considered the scope of Section 176 of the Tamil Nadu Village Panchayats Act for grant of exemption. Thus, the principles laid down by the Hon'ble Full Bench is to be applied for the purpose of considering the present Writ Petitions.

7. The learned counsel for the fourth respondent / Panchayat objected the said contentions raised on behalf of the writ petitioners by stating that the issue relating to payment of house tax is no more res integra and the Hon'ble Full Bench of the Madras High Court elaborately considered the provisions of the Act and Rules and answered the reference made regarding the exemption to be granted from payment of house tax. The Hon'ble Full Bench in the case of The president, K.Vellakulam Panchayat , Kallikudi Chatram, Madurai District V. Kamaraj College of Engineering and Technology reported in 2009 (5) CTC 289 considered the scope of exemption to be granted under Rule 15 of the Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules as follows:

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"17. We have already noticed that Rule 15 is a subordinate legislation which cannot over ride the substantive provisions of the Act such as Sections 171(1), 172 and 176. Section 171(1) mandates the Village Panchayat to levy house tax on all the houses of the village panchayat. The mandate is also clear from section 172, wherein the basis of levy of house tax has been prescribed. There is a prohibition from grant of exemption of surcharge or tax under section 176 except in accordance with the rules. Therefore, if rule 15 is read with the aforesaid Sections 171, 172 and 176, it is to be held that under Rule 15 it is not mandatory to grant exemption from house tax, but is an enabling provision allowing the village panchayat to grant exemption to a class of buildings as specified therein, if it so chooses. Rule 15 cannot be held to be mandatory to exempt a class of buildings from payment of house tax, which otherwise will run counter to sections 171, 172 and 176 of the Act and may render Rule 15 ultra vires. Therefore, the word "shall" used in Rule 15 has to be read as "may" to give effect to the said rule of exemption.

18. We, accordingly, hold that the exemption prescribed under Rule 15 is not mandatory and is an enabling provision empowering the Village Panchayat or Panchayat Union to grant exemption to a class of buildings as specified therein. The corollary is that it is open for the Village Panchayat or Panchayat union not to grant such exemption in favour of one or other class of such buildings. The court cannot force the panchayat to exercise its discretionary power to grant exemption to one or other class of buildings in absence of any decision taken by the village panchayat or Panchayat Union to grant such exemption. Once a village panchayat or Panchayat Union takes a decision to grant exemption in favour of one or other class of buildings, only in that case no discrimination can be made between two similarly situated persons and no order can be passed in an arbitrary manner.

Learned single judge, in the present case and the Division Bench in Sriram Educational Trust (Supra) having failed to notice the aforesaid aspect, we hold that the Division Bench in Sriram Educational Trust (Supra) has not laid the correct law."

8. In the case of Vikram College of Engineering, the Hon'ble Supreme Court also directed the College to pay the property tax. The learned Single Judge of the Madras High Court in a batch of Writ Petitions held as follows:

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> "8. In the light of the above, the petitioner institutions are at liberty to challenge the increase of property tax by availing remedies available under the provisions of the Act and this can be done by the petitioners without prejudice to the rights in the pending writ petitions as well as appeals, therein the larger issue with regard to levy of property tax is put to challenge. In the light of the above, the respondents are directed to issue a revised demand giving break-up details. The above direction shall be complied with by the respondent-Panchayats, within a period of four weeks from the date of receipt of a copy of this order. It is needless to say that the petitioners should be granted reasonable time to comply with the revised demand of property tax. With the above direction, these writ petitions stand disposed of. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.
>
> In the light of the above, the petitioners are directed to pay the property tax with effect from 05.03.2008 and continue to remit the same till the writ petitions are heard and disposed of. With regard to surcharge passed, the same shall be paid pursuant to the demand, which shall be raised by the third respondent in terms of the direction issued in Kaavery Educational Trust(Supra)."

9. It is brought to the notice of this court that similar Writ Petitions are pending for hearing either before the learned Single Judge or before the Hon'ble Division Bench. However, this court is of an opinion that mere pendency of such Writ Petitions cannot be a bar for deciding the present Writ Petitions as the Hon'ble Full Bench of this court interpreted the exemption class under the provisions of the Tamil Nadu Village Panchayats Act and the relevant rules for the purpose of demand of house tax by the Panchayat. The judicial Presidents to be followed in the order of hierarchy is now settled by the Constitutional Bench of the Hon'ble Supreme Court of India in the case of National Insurance Company v. Pranay Sethi and others reported in 2017 (2) TNMAC 609 (SC). Accordingly, once the Hon'ble Full Bench of this High Court decided an issue, then the connected matters need not be kept pending unnecessarily and judicial discipline requires that the judgment of the Hon'ble Full Bench and the principles laid down are to be followed for the purpose of deciding the cases.

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10. Let us now look into Section 176 of the Tamil Nadu Panchayats Act, 1994 which enumerates exemption. Accordingly "no exemption from the payment of any surcharge or tax specified in Section 171 shall be granted by Village Panchayat except in accordance with such rules as may be prescribed; provided that in any particular case, such exemption may be granted with the previous sanction of the Government”. The very exemption provision itself indicates that exemption may be granted in accordance with the rules and in any particular case also, such exemption may be granted with the previous sanction of the Government. It is to be noted that, the language employed in section 176 is "may" when the legislative intention unambiguously clarifies that the Village Panchayat may grant exemption by the previous sanction of the Government, then a discretion is granted to the Village Panchayat either to grant exemption or to demand house tax as the case may be.

11. However, once a decision under section 176 of the Act is taken, then such decision is to be followed consistently and in an uniform manner without causing any discrimination amongst the similarly placed persons in the particular Panchayat. Consistency and uniformity and non- discrimination is the constitutional principles. Thus, a decision is taken to collect the tax or to grant exemption must be taken judiciously and without causing any discrimination amongst the similarly placed persons. This being the principles to be followed in the matter of grant of exemption with reference to Section 176 of the Tamil Nadu Panchayats Act, the respondents are bound to look into the allegations of discrimination as raised by the petitioners and rectify the discrimination or inconsistency if any by initiating appropriate action. Generally, exemption can never be claimed as a matter of right. Exemptions are to be granted strictly in accordance with the provisions of the Act and Rules. The collection of property tax is a Revenue for the development of the Village Panchayat. The Village Panchayat are depending on such property tax for the purpose of providing basic amenities and infrastructure facilities to the people residing in the Villages. Thus, the importance of property tax in a Village Panchayat at no circumstances be undermined and such collection of tax is constitutionally recognized under Article 243 H of the Indian Constitution which confers power to impose taxes by, and funds of, the Panchayats. Accordingly, the legislature of a State may, by law, authorise a Panchayat to levy, collect and appropriate such taxes, duties, tolls and fees in accordance with such procedure and subject to such limits. Thus, the collection of tax by Village Panchayat is of constitutional importance, as from and out of such taxes, basic amenities and facilities including public roads, street lights, water facilities etc., are provided by the Village Panchayats for the benefit of the

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people. All institutions like that of the petitioners in Village Panchayats are also enjoying such basic amenities and facilities. Thus, the Village Panchayats are expected to be cautious in granting exemptions and such exemptions are to be granted for deserving and in a restricted manner so as to ensure that the developmental activities in the Village Panchayats are not parallelized.

12. The rules are to be read in consonance with section 176 of the Tamil Nadu Panchayats Act as considered earlier. Exemption contemplated under section 176 of the Act is discretionary and not mandatory as the language employed is "may" and in any particular case exemption may be granted with the previous sanction of the Government. Therefore, the Village Panchayat has to take a decision in this aspect by exercising its discretionary power and even if such decision is taken to grant exemption under Section 176, then previous sanction of the Government is also required for implementing the benefit of exemption. There is a check and balance contemplated under Section 176 of the Act in order to avoid any abuse of power of exemption by any authority of the Village Panchayat. Under these circumstances, no person can claim exemption as a matter of legal right.

13. In respect of Rule 15, the Hon'ble Full Bench of this court categorically held that Rule 15 is not mandatory to grant exemption from house tax, but it is an enabling provision allowing the Village Panchayat to grant exemption to a class of buildings as specified therein, if it so chooses. Rule 15 cannot be held to be mandatory to exempt a class of buildings from payment of house tax, which otherwise will run counter to Sections 171, 172 and 176 of the Act and may render Rule 15 ultra vires. Therefore, the word "shall" used in Rule 15 has to be read as "may" to give effect to the said rule for exemption. In this aspect, the Hon'ble Full Bench has taken note of the fact that section 176 states that the Village Panchayat may grant exemption that being the tenour of the Act. The rule cannot supersede the powers of discretion conferred to the Village Panchayat under section 176 of the Act. In other words, the rule cannot be read in consistent with the main provisions contemplated under the Act. Taking note of these facts, the Hon'ble Full Bench has interpreted Rule 15 of the said Rules and further held in Para No.18 that the exemption prescribed under Rule 15 is not mandatory. The Court cannot force the Panchayat to exercise its discretionary power to grant exemption to one or other class of buildings in absence of any decision taken by the Village Panchayat or Panchayat Union to grant such exemption. Importantly, the Hon'ble Full Bench made an observation that once a Village Panchayat or Panchayat Union takes a decision to grant exemption in favour of one or other class of buildings, only in that case no discrimination can be

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made between two similarly situated persons and no order can be passed in an arbitrary manner. The Hon'ble Full Bench is also reiterated that granting exemption is the discretionary power vested with the Village Panchayat. However, such decision if any taken must be implemented uniformly and without causing any discrimination amongst the similarly placed persons.

14. This being the factum established as well as the principles reiterated with reference to the provisions of the Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999, this court is of an opinion that the petitioners cannot seek any exemption as a matter of right and there is no infirmity as such in respect of the demand of notice issued in the case of the petitioners. The petitioners are directed to settle the arrears of property tax within a period of eight weeks from the date of receipt of a copy of this order.

15. Accordingly, the Writ Petitions stand dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Secretary,
   The Government of Tamil Nadu,
   Rural Development and Panchayat Raj Department,
   Fort St.George,
   Chennai - 600 009.

2. The District Collector
   Namakkal District,
   Namakkal.

3. The Block Development Officer (Village Panchayat)
   Block Development Office,
   Kabilar Malai, Paramathi Taluk,
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4. The President / Executive Authority,
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5. The Block Development Officer (Village Panchayat)
   Block Development Office,
   Rasipuram Taluk,
   Namakkal District - 637 408.

6. The President / Executive Authority,
   Kakkaveri Panchayat
   Rasipuram Taluk.,
   Namakkal District - 637 408.

+1cc to Mr.R.Ravichandran, Advocate, S.R.No.43770
+2cc to Dr.FR.Xavier Arulraj, Advocate, S.R.No.44216
+1cc to the Government Pleader, S.R.No.44269

W.P. Nos. 8096 and 14308 of 2011

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