IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.15084 of 2021 &
W.M.P.No.15979 of 2021

Arulmigu Aadi Pureeswarar & Aadi Kesavaperumal
Thirukoil,
rep. By its Executive Officer,
Chintadripet,
Chennai – 600 002 ... Petitioner

Vs.

1. The Addl. Chief Secretary /
Commissioner of Land Reforms,
Ezhilagam, Chepauk,
Chennai – 600 005

2. The Special Tahsildar (ULT)
Tondiarpet Taluk,
Chennai – 600 003 ... Respondents

Writ Petition is filed under Article 226 of Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the 1st respondent made in the proceedings bearing RC.No.B1/685/2005 dated 10.02.2021, quash the same and direct the 1st respondent to grant exemption to the petitioner under Section 27(i)(a) of Tamilnadu Urban Land Tax, 1966 in respect of the lands owned by the petitioner.

For Petitioner : Mr.A.K.Sriram for
M/s A.S.Kailasam and Associates

For Respondents : Mr.Yogesh Kannadasan
Government Advocate

ORDER

The petitioner seeks for a issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent made in the proceedings bearing RC.No.B1/685/2005 dated 10.02.2021, quash the same and direct the 1st respondent to grant exemption to the petitioner under Section 27(i)(a) of Tamilnadu Urban Land Tax, 1966, [in short the 'Act'] in respect of the lands owned by the petitioner.

2. The brief facts of the case is that the petitioner is the temple being in existence for many years under the superintendence of the H.R.& C.E.Department and governed by the provisions of the Tamilnadu H.R.& C.E. Act, 1959. The petitioner-temple owns vast extent of land in and around the temple and other areas and the lands have been dedicated, gifted and endowed over the years by kings, philanthropists, devotees and donors to perform poojas and festivals of the temple and the income derived from the same is being used for these specific purposes and not for any other purpose. The petitioner-temple owns large extents of land at

Tondiarpet, Vepery and Chintadripet in various survey numbers and the lands have been leased out to tenants and the rents being obtained for the lands is very low and in many cases, tenants are in huge arrears. Since the petitioner – temple is a public religious temple, the income from the said lands is used exclusively for religious purposes, due to which, the petitioner is also exempted from payment of income tax by virtue of Section 11 of the Income Tax, Act.

3. According to the petitioner, in Survey No.3800, Block No.57, Temple owns more than 64 grounds and there is no demand of urban land tax since the year 1980. Since the petitioner-temple is exempted from payment of Income tax by virtue of Section 11 of the Income Tax Act and in view of G.O.Ms.No.1947 and G.O.Ms.No.2625, the petitioner-temple should be exempted from payment of urban land tax as well. That being the factual situation, the petitioner - temple received a notice of demand dated 19.11.2004 calling upon the temple to pay urban land tax from 1385 to 1400 for a sum of Rs.1,44,880/- Challenging the said notice, the petitioner-temple preferred W.P.No.39606 of 2004 and the same was disposed of on 02.07.2019 directing the petitioner-temple to make an application for exemption under Section 27 of the Urban Land Tax Act and

for the 1st respondent to consider the same. In consequence, an application dated 19.01.2021 was made to the 1st respondent and an enquiry was conducted and the 1st respondent had passed an order dated 10.02.2021, by which the request of the petitioner was rejected. Aggrieved against the same, the petitioner has come forward with this petition.

4. The learned counsel for the petitioner submits that the authority, had passed the impugned order by not considering the Government orders with regard to the relevancy of exemption from payment of income tax under Section 11 of the Income tax Act. Further, the authority has not considered the grounds on which exemptions can be granted and has gone into the question of the tax amount as a percentage of the income of the temple. The findings in Paragraph No.8 of the impugned order in respect of the urban land tax as a percentage of the total income is clearly erroneous, since it is the payment of tax in absolute terms that should be considered while going into the question of undue hardship to the temple.

5. The learned counsel for the petitioner contends that in the impugned order, the authority has not specified any diversion of the income from the said lands or that the same has been utilized for a purpose other

than that of the religious institution. Though the temple has capabilities, certain lands are let out to tenants, the said tenants in most cases are in arrears of rent, due to which, the temple is unable to realize regular rental income. That apart, the respondents are trying to enforce the impugned order, as such, the petitioner has filed the present Writ Petition.

6. The learned counsel for the petitioner in support of his contention has relied on the order passed by this Court in **W.P.Nos.22659 of 2004 reported in 2016 SCC Online Mad 24282 [A/m. Ekambaranathar Thirukoil rep. By its Executive Officer, Kanchipuram – 631 502 Vs. The Commissioner for Land Reforms Ezhilagam, Chepauk, Chennai and others**], wherein the identical issue was dealt with and this Court observed that *"As long as the objects of the exemption are fulfilled as the lands have been used for the purpose of the institution without any deviation, the exemption should enure in favour of the petitioner's institution"* and disposed of the said writ petition by directing the respondents 1 and 2 therein to consider the prayer for exemption sought for by the petitioner therein.

7. Resisting the submissions of the learned counsel for the petitioner, the learned Government Advocate appearing for the respondents, by way of a detailed counter affidavit, has submitted that the petitioner-temple is administered by the Hindu Religious & Charitable Endowment Department and the Manager of the Temple had sent an application dated 28.02.1984 to the Commissioner of Land Reforms requesting exemption under Section 27(1) of the Act stating that the income derived from the lands belonging to the temple are utilized for the daily temple poojas and expenses relating to religious institution. The 2nd respondent by way of a letter dated 09.11.1987 informed the Manager of the Temple that provisional assessment orders are to be passed as per G.O.Ms.No.1165, Revenue Department, dated 27.07.1987 and the petitioner may apply for exemption.

8. The learned Government Advocate appearing for the respondents also contends that as per the said Government Order, the provisional assessment order was issued on 20.07.1992 in the name of the temple. As against the said assessment order, the petitioner temple, filed an appeal petition before the City Civil Court, Chennai and the same was transferred to the District Revenue Office for disposal. The District

Revenue Officer dismissed the appeal for default of the appearance of the appellant. Since the appeal was dismissed, 2nd respondent had issued a demand notice on 19.11.2004 to pay urban land tax dues. As against the same, earlier, the petitioner filed a writ petition in W.P.No.39606 of 2004 and this Court had disposed of the said writ petition by granting liberty to make a fresh application seeking exemption and directing the 1st respondent herein to consider the same after affording due opportunity of personal hearing to the petitioner.

9. The learned Government Advocate appearing for the respondents further submits that consequently, the petitioner-temple was requested to make a fresh application before the 1st respondent vide letters dated 29.10.2019 and 18.12.2019, since no response was received from the petitioner, inspite of affording opportunity, the matter was posted for hearing on 23.03.2020 vide notice dated 13.03.2020, but the petitioner failed to appear for hearing and the case was finally adjourned to 19.01.2021. On 19.01.2021, the counsel for the petitioner-temple appeared before the 1st respondent and put forth his arguments. On examining the audited accounts and on comparative analysis of net income, net expenditure and income derived through rent / lease, the 1st

respondent opined that the average percentage of urban land tax amount of Rs.9,055/- is liable to be paid by the petitioner-temple per fasli is very least amount, thereby rejected the request of the petitioner-temple for grant of exemption from payment of urban land tax on 10.02.2021. Further, upon perusal of all the relevant documents, the 1st respondent had passed the impugned order, which is valid in the eye of law, hence seeks to dismiss the present Writ Petition.

10. Heard the learned counsel on either side and perused the documents placed on record carefully.

11. Admittedly, from the counter affidavit filed by the respondents, it could be seen that the Special Commissioner and Commissioner of Land Reforms vide letter no.D.Dis.34278/1984 dated 09.11.1987 has informed the Manager of Temple that provisional assessment orders to be passed as per G.O.Ms.No.1165, Revenue Department dated 27.07.1987 and that the petitioner was directed to apply for exemption after the receipt of the provisional assessment. Further, as per the said Government Order, the provisional assessment order was issued on 20.07.1992 stating that the land situated at Tondiarpet alone exceeds two grounds, thereby levied

urban land tax with effect from Fasli 1385 to the tune of Rs.9,055/-. However, as against the said order, the petitioner preferred an appeal before the City Civil Court, Chennai and the same was transferred to District Revenue Officer. The District Revenue Officer dismissed the appeal for default in view of the non-appearance of the appellant. Since the appeal petition was dismissed, the Special Tahsildar, Tondiarpet zone had issued a demand notice on 19.11.2004. Further, as against the said Demand Notice, the petitioner preferred a W.P.No.39606 of 2004 and the said Writ Petition was disposed of by granting liberty to the petitioner to make a fresh application to the 1st respondent and a direction was also given to the 1st respondent to consider the same after providing due opportunity of personal hearing. Accordingly, the 1st respondent after affording opportunity of personal hearing and after scrutinising the documents placed on record and on demand of income and expenditure statements, has passed the order by levying urban land tax and it is relevant to extract paragraph Nos.8(ii) & 9 (i) and (ii), wherein it is held as follows:-

> *“8(ii) The urban land tax amount liable to be paid by the petitioner temple is Rs.9,055/- per fasli (under provisions of Tamil Nadu Urban Land Tax act 1975) Whereas, the average percentage of Urban Land Tax of the total net income*

Rs.25,58,839/- is barely 0.36%, the average percentage of urban land tax of the total net expenditure Rs.21,21,446.5/- is barely 0.43%, the average percentage of urban land tax of the total income derived through Rent / Lease Rs.15,99,515/- is barely 0.57%

9) i) Comparative analysis of net income, net expenditure and income derived through rent / lease proves that the average percentage of urban land tax amount of Rs.9,055/- liable to be paid by the petitioner-temple per fasli is very least amount that would not cause any undue hardship to it"

12. On a perusal of the impugned order, it is clear that though the 1st respondent had heard the grievances / points adduced by the petitioner and narrated the same in the impugned order and the counter filed by the respondents also elucidates that the 1st respondent examined the request of the petitioner with reference to the guidelines issued in G.O.Ms.No.1947, Revenue Department dated 17.09.1976, however, has not addressed to any points raised by the petitioner in the impugned order.

13. Since the 1st respondent / authority had rejected the prayer of the petitioner, viz., to grant exemption under Section 27(i)(a) of the Act, it is necessary to extract the relevant portion of the same.

27. Power of Government to exempt or reduce urban

land tax. -

"(1) The Government, if satisfied that the payment or urban land tax in respect of any class of urban lands or by any class of persons will cause undue hardship, they may, subject to such rules as may be made in this behalf, by order , -

(a) exempt such lands or persons from the payment of the urban land tax, or

(b) reduce the amount of such urban land tax whether prospectively or retrospectively.

(2) The Government may at any time cancel or modify any order issued under sub-section (1) and upon such cancellation of modification, the entire amount or urban land tax, or the amount of urban land tax due under the modified order, as the case may be, shall be payable in respect of the land concerned with effect from the fasli year in which such cancellation or modification is made :

Provided that no such cancellation or modification shall be made unless the party likely to be affected by such cancellation or modification has had a reasonable opportunity of making his representations."

In the light of the above, it is settled proposition of law that power under Section 27(1) of the Act is quite distinct from the power to grant exemption under Section 29 of the Act. In terms of Section 27(1) of the Act, the Government, if being satisfied that the payment of urban land tax in respect of any class of persons will cause undue hardship, they may, subject to such rules, as may be made in this behalf, by order, exempt such lands or persons from the payment of urban land tax.

14. On a mere perusal of Paragraph No.6 of the impugned order dated 10.02.2021, it is clear that Tmt.R.Sowmya, Assistant Commissioner (Urban Land Tax) Tondiarpet, who appeared for hearing on 19.01.2021 had defended the case by contending that the petitioner-temple is in receipt of huge income by way of rental/lease amount, though it was resisted by the petitioner that the said income derived is fully spent for maintenance of the temple and paying salary to employees, the said authority, opined that 'paying tax would not cause any undue hardship to it', which in the considered opinion of this Court, needs further examination.

15. It is pertinent to point out that in the decision of this Court in W.P.No.22659 of 2004 reported in 2016 SCC Online Mad 24282, above mentioned supra, relied on by the learned learned counsel for the petitioner, the prayer therein was to extend the order of exemption dated 23.01.1979 passed by the Board of Revenue (ULC & ULT) to the land of the petitioner-temple therein, this Court opined that *“As long as objects of the exemption are fulfilled, as the lands have been used for the purpose of*

the institution without any deviation, the exemption should enure in favour of the petitioner's institution". Although the authority in the said Writ Petition has not passed any order, this Court had directed the respondents 1 and 2 therein to pass order keeping in mind that the land owned by the petitioner therein were used *for the purpose of the* institution without any deviation and the lands encroached by the several third parties, who are not paying any rent, while examining the prayer for exemption. But, in the present case, a bare reading of the impugned order passed by the 1st respondent, dated 10.02.2021 would reveal that the 1st respondent has not only failed to consider the submissions of the petitioner at the time of enquiry, but also the scope of the relevant Government Orders mentioned by the petitioner.

16. Further, from the affidavit filed in support of this petition, it could be seen that the temple has satisfied the main norms, viz., it has spent 90% of its income for its objectives and purposes and the whole extent of the lands are not used for commercial and residential purposes. The Temple has satisfied one more norm, viz., it has been recognized as a charitable institution under Section 12a(a) of the Income Tax Act, 1961, though it has no binding force to exempt the lands owned by the Temple

from the provisions of the Urban Land Tax Act. In addition, on going through the representation of the petitioner dated 19.01.2021 addressed to the 1st respondent, it could be seen that the petitioner, among other things, had requested the authority to consider the request for exemption under Section 29 (c) of the Act. For useful purpose, the same is extracted hereunder:-

> *"29(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 ;] This clause was substituted for the following original clause(c) of section 29 by section 12(i) of the Tamil Nadu Urban Land Tax (Amendment) Act, 1975 (Tamil Nadu Act 49 of 1975) : -*

however, the authority has not considered the same and the authority has also failed to consider the government orders.

17. Besides the above, the main contention of the learned counsel appearing for the petitioner is that certain lands are let out to tenants, the said tenants in most cases are in arrears of rent, due to which, the temple

is unable to realize regular rental income. Further, in the impugned proceedings, dated 10.02.2021 passed by the 1st respondent, there is no detailed discussion with regard to the reasons for not accepting the submissions made on behalf of the petitioner.

18. In view of the submissions made by the learned counsels appearing for the petitioner, as well as the respondents and on a perusal of the records available before this Court, it is seen that the above mentioned aspects have not been dealt with by the 1st respondent in detail. In such circumstances, the impugned proceedings, dated 10.02.2021 issued by the 1st respondent, is set aside and the matter is remitted back to the 1st respondent for reconsideration, on merits, based on the relevant records establishing that most of the tenants are in arrears of rent, which would be submitted on behalf of the petitioner within a period of four weeks from the date of receipt of copy of this order.

19. To be noted, the remand is a very limited remand and it is confined to only one point and that one point pertains to the benefits claimed by the writ petitioner under Section 29(c) of said Act and vide G.O.Ms.Nos.1947 and 2625. After receipt of a report from the petitioner, 1st

respondent shall afford an opportunity of personal hearing to the writ petitioner's authorized representative, and consider the rival submissions, give a specific and categoric finding regarding the benefits claimed by the writ petitioner under Section 29(c) of said Act and vide G.O.Ms.Nos.1947 and 2625. For the purpose of facilitating this limited remand and for the purpose of having a fresh order passed, the impugned order has been set aside in their entirety.

In the result, the Writ Petition is allowed to the extent indicated above. Consequently, connected miscellaneous petition is closed. No costs.

06.12.2021

Index : Yes/No;
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

1. The Addl. Chief Secretary /
   Commissioner of Land Reforms,
   Ezhilagam, Chepauk,
   Chennai – 600 005

2. The Special Tahsildar (ULT)
   Tondiarpet Taluk,
   Chennai – 600 003

V.BHAVANI SUBBAROYAN, J.,

ssd

W.P.No.15084 of 2021 &
W.M.P.No.15979 of 2021

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