IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl. O.P. No.2700 of 2017
in
Crl. M.P. No.1895 of 2017

Sri Manakula Vinayagar Medical College
and Hospital,
Shri. M. Dhanasekaran,
Kalitheerthalkuppam,
Puducherry - 605 107

...Petitioner

Vs.

The Executive Officer,
Town Panchayat,
Thiruvennainallur,
Villupuram District.

... Respondent

PRAYER:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the complainant filed by the respondent vide STC No.90 of 2016, pending on the file of the learned Judicial Magistrate-II, Ulundurpet and quash the same.

For Petitioner : Mr. B. Balavijayan

For Respondent : Mr. S. Diwakar

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O R D E R
(Through Video Conference)

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the records pertaining to the complainant filed by the respondent vide STC No.90 of 2016, pending on the file of the learned Judicial Magistrate-II, Ulundurpet and quash the same.

2. The case of the petitioner is that Sri Manakula Vinayaga Educational Trust was established with a vision to impart Education and to provide adequate medication to the poor in and around the villages of Pondicherry and Villupuram. Various Educational Institutions are run by the Trust in the state of Pondicherry and Tamil Nadu. The Trust also runs a Rural Health and Training Centre attached to Sri Manakula Vinayagar Medical College and Hospital, at Thiruvennainallur. The Rural Health Centre was established in the year 2012. It was solely established for the welfare and benefit of the people in and around the Villages of Thiruvennainallur. Trust has constructed the building in its own land duly obtaining permission from the Executive Officer, Thiruvennainallur, Town Panchayat. The construction of the building was completed in the year 2012 and the Rural Health and Training Centre started functioning from 2012, providing medical facility to the village people round the clock. While being so, the respondent had issued the proceedings dated 10.07.2015 vide Na.Ka. No.17 / 2015/A 1 enclosing Demand Notice dated 10.07.2015 requesting for the payment of Rs.2,45,508/- towards the Property Tax for the Rural Health and Training Centre of Sri Manakula Vinayagar Medical College and Hospital, Puducherry - 605 107, functioning at Thiruvennainallur for the period from 2012-2013 to 2014-2015. The petitioner has sent reply notice enclosing supporting documents wherein it has been stated that there is exemption from payment of property tax for buildings used for educational purpose. However, the respondent has filed the case against the Secretary, Sri Manakula Vinayagar Medical College and Hospital, Kalitheerthalkuppam, Puducherry-605 107 before the learned Judicial Magistrate, Ulundurpet vide STC No.90 of 2016 seeking for recovery of the arrears of property tax of Rs.2,45,508/- for the Hospital building functioning at Thiruvannainallur from the Secretary, Sri Manakula Vinayagar Medical College and Hospital under the provisions of Section 348 (2) of the Tamil Nadu District Municipalities Act, 1920. Assailing the aforesaid complaint, the petitioner herein has filed present Original Criminal Petition under Section 482 Cr.P.C. to quash the same.

3. The learned counsel for the petitioner would submit that the criminal proceedings initiated by the respondent is an apparent error and the shear abuse of process of law while the Rural health and Training Centre is providing training to our MBBS and Post Graduate Students in batches throughout the year, whereby utilizing the building for educational purpose and for providing free medical service to the Public, and as such the said building are being exempted from being taxed as per the Act.

4. The learned counsel for the petitioner has relied on

the Section 83 of the Tamil Nadu District Municipalities Act, 1920 which reads as follows:

> "83. General exemptions: - (1) the following buildings and lands shall be exempt from the property tax:-
>
> (a) places set apart for public worship and either actually so used or used for no other purposes;
>
> (b) choultries for the occupation of which no rent is charged and the rent charged for the occupation of which is used exclusively for charitable purposes;
>
> (c) buildings used for educational purpose including hostels attached thereto, public buildings and places used for the charitable purpose of sheltering the destitute or animals, and libraries and playgrounds which are open to the public;
>
> (d) such ancient monuments protected under the Ancient Monuments Preservation Act, 1904, (Central Act VII of 1904), or parts thereof as are not used as residential quarters, or as public offices;
>
> (e) charitable hospitals and dispensaries;
>
> (f) such hospitals and dispensaries maintained by railway administrations as may, from time to time, be notified by the State Government;"

The petitioner herein in this case has claimed that the building is used for "Educational purpose" and Charitable Hospital" under Clauses (c) and (e) respectively of Section 83(1) of the Tamil Nadu District Municipalities Act, 1920, and hence the petitioner is liable for exemption of property tax. However, the respondent has initiated the criminal proceedings without adhering to the provision of law, without application of mind. Hence, the complaint filed by the respondent is liable to be quashed at the prima facie.

5. The learned counsel appearing for the respondent would submit that the respondent has demanded the property tax of Rs.2,45,508/- from the petitioner trust as per provisions of the said Law. Since the building is not used for the aforesaid purpose by the petitioner herein, the petitioner is liable to pay the property tax. Hence, the respondent has sent the demand notice to the petitioner herein to pay the property tax.

6. Heard, Mr. B. Balavijyan, the learned counsel appearing for the petitioner and Mr. S. Diwakar, the learned counsel appearing for the respondent.

7. During the hearing of this case, the learned counsel for the petitioner has submitted an Additional Typed set of

papers before this Court.

8. On a perusal of the same, it is seen that the petitioner has filed the Writ Petition in W.P. No.8219 of 2017 before this Court seeking for Writ of Certiorari, to quash the impugned demand raised by the respondent herein. After considering the submissions made by both parties, this Court by its order dated 16.10.2020 held as follows:

> "(i) The petitioner is at liberty to make a representation to the respondent objecting to the demand of property tax, enclosing all the relevant materials, along with 1/3rd of the arrears in the impugned demand on or before 31.12.2020;
>
> (ii) On receipt of the same, the respondent after due notice to the petitioner shall inspect the premises so as to ascertain the veracity of the materials relied by the petitioner for exemption, with particular reference to amounts collected by the petitioner from the persons using the premises for educational purpose and/or charitable hospital and determine whether those amounts so collected is by way of 'rent' and affording full opportunity of hearing to the petitioner, deal with each of the contentions raised and pass reasoned order on merits and in accordance with law and communicate the decision taken to the petitioner 31.03.2021 under written acknowledgment.
>
> (iii) In case the petitioner does not carry out any of the aforesaid requirements within the stipulated time, the Respondent is not precluded from proceeding further to recover the property tax demanded in the impugned notice following the prescribed procedure in consonance with the principles of natural justice in the manner recognized by law; and
>
> (iv) Though obvious, it is made clear that no opinion has been expressed by this Court on the correctness or otherwise on the merits of the controversy involved in the matter.

According to the aforesaid order dated 16.10.2020, the petitioner herein has sent a representation objecting to the demand of property tax. However, no reply has been received by the petitioner on its representation. On questioning about the status of representation made by the petitioner, the learned counsel for the respondent submitted that representation dated 21.12.2020 sent by the petitioner has been forwarded to the authority concerned to take appropriate decision. It has been further submitted that as per the direction of this Court in the Writ petition No.8219 of 2017, the respondent has inspected the premises so as to ascertain whether the said building are exempted from the property tax or not. However, the respondent is yet to pass an order regarding the exemption of the property tax in the said building.

9. Further, this Court by its order dated 13.02.2017 in Crl. M.P. No.1895 of 2017 in Crl. O.P.No.2700 of 2017 granted interim stay on condition to deposit a sum of Rs.1.5 Lakhs by the petitioner to the Credit of STC No.90 of 2016 on the file of the Judicial Magistrate No.II, within a period of four weeks. The petitioner herein deposited the amount accordingly.

10. Under this circumstances, this Court is of the view that as the respondent has not passed any order so far with regard to exemption of property tax for the said building, the respondent is directed to pass appropriate order on the representation filed by the petitioner after inspecting the said building with in a period of four weeks from the date of receipt of copy of this order. Till such time, the petitioner shall not be pressed for further payment of arrears of property tax. After deciding the matter that the building comes under the exemption from the property tax or not, the 1/3 payment of arrears which has been already paid by the petitioner, can be adjusted towards the entire property tax or it can be withdrawn by the petitioner by filing appropriate petition before authority.

11. With the aforesaid directions, this Criminal Original Petition stands disposed of. Consequently, connected miscellaneous petitions is also closed if any.

Sd/-
Assistant Registrar(CS-III)

// True Copy//

Sub Assistant Registrar

Lbm

To:

1.The learned Judicial Magistrate-II,
Ulundurpet.

2.Do Through,
The Chief Judicial Magistrate,
Villupuram.

3.The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to M/s.B.Balavijayan, Advocate, S.R.No.40094

+1cc to M/s.S.Diwakar, Advocate, S.R.No.40288

Crl. O.P. No.2700 of 2017
in
Crl. M.P. No.1895 of 2017

RP(CO)
SU(06/09/2021)