IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.14632 of 2020 &
WMP.No.18156 of 2021

Arulmigu Dharma Vinayagar
Dharmaraja Thirukoil
Rep by its Executive Officer
321, Linghi Chetty Street,
Chennai- 01 …Petitioner

Vs

1.Additional Chief Secretary/
Commissioner of Land Reforms,
Ezhilagam, Chepauk
Chennai-05
2. Assistant Commissioner ULT Land Tax
Tondiarpet, 248, Poonamallee High Road
Aminjikarai, Chennai
3.Urban Land Tax Officer
Special Tahsildar, ULT Purasaiwalkam Taluk,
Chennai-03 …Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of certiorari calling for the records pertaining to the impugned order in proceedings Rc. No. 13934/ 2001/ B1 dated 16.07.2019 on the file of The Additional Chief Secretary/ Commissioner of Land Reforms Ezhilagam Chepauk Chennai- 600 005 and quash the same.

For Petitioner : Mr.D.R.Sivakumar

For Respondents : Mr.R.P.Prathap Singh
Government Advocate

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O R D E R

The petitioner challenges order dated 16.07.2019 rejecting its request for grant of exemption from payment of urban land tax (ULT) in terms of Section 27(1)(a) of the Tamil Nadu Urban Land Tax Act, 1966 (in short ‘Act’).

2. The petitioner is the Arulmigu Dharma Vinayagar Dharmaraja Thirukoil (temple), a listed temple in terms of the Hindu Religious & Charitable Endowments Act. On 06.08.1979, an order was passed by the Board (UTC & ULT) granting exemption from levy of ULT. This order does not, per se, refer to Section 27(1)(a). Conditions were imposed for continued enjoyment of the exemption stipulating that (i) the lands in question are to be used only for the purposes of the institution and (ii) if the institution disposes the vacant land by way of sale, gift or any other mode, the entirety of the tax would become payable. The petitioner has been enjoying the exemption granted till date.

3. While this is so, the petitioner is in receipt of the impugned order where the Additional Chief Secretary/Commissioner of Land Reforms quoting Section 27(1)(a), rejects the request for exemption on the ground that the aforesaid provision extends the benefit of exemption only in those cases where undue hardship would be caused to the institutions if asked to remit ULT. In the present case, he notes that the petitioner is in receipt of substantial rental income in the region of Rs.9 lakhs and hence, according to him, the remittance of the tax, which is only in the region of Rs.13,000/-, will cause no hardship to the petitioner.

4. It is relevant to note that the Assistant Commissioner, from whom a report has been called for, has recommended the continuance of the exemption, since the conditions imposed under order dated 06.08.1979 granting exemption, are being complied with by the petitioner. The impugned order has come to be passed notwithstanding the recommendation of the Assessing Officer.

5. Since, admittedly, no notice had been issued prior to passing of the same, the petitioner filed a representation dated 16.08.2019, (post receipt of the impugned order) enclosing its financials including receipts and expenditure account to establish that the premise upon which the officer has proceeded, that it was flush with funds, is factually incorrect. In fact, according to it, there have been several years when the temple has had to avail loans to meet its routine expenses.

6. The Act envisages two situations in which an institution coming within its cover could seek exemption, the first, in terms of Section 27, and the second, in terms of Section 29.

7. Section 27 deals with the power of the Government to exempt or reduce tax, reading as follows:

> 27.Power of Government to exempt or reduce urban land tax.-(1) The Government, is satisfied that the payment of 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 (10) and upon such cancellation or modification, the entire amount of urban land tax, or the amount of urban land tax due under the modified order, as the case may, 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.

8. The crux of Section 27 is thus a determination of the Government that the payment of urban land tax would cause 'undue hardship' and such an institution would stand exempted from the levy thereof or extended the benefit of a reduction in the amount of tax to be paid.

9. Section 29 sets out various situations where an institution may seek exemption and under sub-section (c), extends an exemption from ULT to a religious institution, in the following terms:

29. Exemptions.- Nothing in this act shall apply to-

....

[(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 construed;]

10. Since in this case, the impugned order is not preceded by a notice, the petitioner has had no opportunity to putforth its case on the aspect of undue hardship. The impugned order is thus set aside with liberty granted to the respondents to issue a show cause notice proposing to withdrawal of the exemption granted on 06.08.1979. The petitioner, in response, is at liberty to seek exemption in terms of Section 29(c) as well. The respondent will cause inspection of the property after notice to the petitioner and orders shall be passed within a period of eight weeks from date of show cause notice. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.Additional Chief Secretary/
Commissioner of Land Reforms,
Ezhilagam, Chepauk
Chennai-05
2. Assistant Commissioner ULT Land Tax
Tondiarpet, 248, Poonamallee High Road
Aminjikarai, Chennai
3.Urban Land Tax Officer
Special Tahsildar, ULT Purasaiwalkam Taluk,
Chennai-03

+1cc to M/s.S.D.Ramalingam, Advocate SR.7009
+1cc to the Government Pleader SR.7091

W.P. No.14632 of 2020 &
WMP.No.18156 of 2021

RSI(CO)
CB(12/03/2021)