IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.85 OF 2017
AND
W.M.P.NO.100 OF 2017

(THROUGH VIDEO CONFERENCING)

Rahmath Girls Matriculation Higher
Secondary School,
Muthupettai, Thiruvarur District,
Rep. by its Correspondent,
M.A.Musthafa,
S/o.Abdul Kasim ... Petitioner

Vs.

The Executive Officer,
Muthupettai Town Panchayat,
Muthupettai (Post),
Thiruthuraipoondi Taluk,
Thiruvarur District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned proceedings issued by the respondent in Na.Ka.No.579/2013/A2 dated 15.09.2016 and the subsequent notice No.2 of 2016 dated 25.11.2016 and quash the same.

For Petitioner : Mr.G.Sankaran

For Respondent : No appearance

O R D E R

In this Writ Petition, the petitioner has challenged the impugned proceedings dated 15.09.2016 of the respondent in Na.Ka.No.579/2013/A2 and the subsequent notice No.2/2016 dated 25.11.2016 issued to the petitioner under Rule 30 to 35 of the IV Schedule to the Act read with Section 313 and 347 of the Tamil Nadu District Municipalities Act, 1920.

2. It is case of the petitioner that the petitioner is a minority unaided school and that the building belonging to the school was exempted from the payment of property tax under Section 83(1)(c) of the Tamil Nadu District Municipalities Act, 1920.

3. Earlier, the petitioner was issued with an order dated 02.05.2008 of the respondent herein and the said order came to be challenged before this Court in W.P.No.14538 of 2008. By an order dated 04.11.2008, the said Writ Petition was dismissed by this Court placing reliance on the decision of the Division Bench of this Court in Sriram Educational Trust, rep. by its Chairman Vs. President, Thiruvallur Taluk and District, 2008 (3) MLJ 351.

4. The said order dated 04.11.2008 in W.P.No.14538 of 2008 was the subject matter of Review Application No.66 of 2009 before the learned Single Judge. By an order dated 03.08.2010, the said Review Application filed by the petitioner came to be allowed with the following observations:-

> 4. The learned counsel appearing for the respondents submits that even though Section 83 of the Tamil Nadu District Municipalities Act, 1920 grants exemption to the buildings used for educational purposes including hostels attached thereto. The said Section contained a proviso stating that nothing contained under Clause a, c and e of Section 83 shall be deemed to exempt for property tax any building or land for which rent is payable by the person or persons using the same for the purposes referred to in the said clause. In the explanation it is further stated that exemption granted in this Section shall not be extend to residential quarters attached to schools, colleges not being hostels or to residential quarters attached to hospitals, dispensaries and libraries.
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> 5. In view of the proviso contained in Section 83, the petitioner has to satisfy the 2nd respondent for the grant of exemption from property tax particularly to the demand of property tax for their residential quarters. The counsel for the petitioner relied upon a judgment of this Court reported in 2010 (4) CTC 31 [A.SUBRAMANIAN v. THE EXECUTIVE OFFICER, III GRADE MUNICIPALITY] and contended that in the said decision it is ordered that the properties owned by educational institutions are exempted.

> The learned counsel for the respondents submitted that the proviso mentioned above has not been considered by this Court in the said judgment and therefore property can be levied from the Educational Institutions for residential quarters.
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> 6. In the said circumstances, I am of the view that the petitioner has to establish before the 2nd respondent with regard to the utilisation of the buildings as to whether the buildings are used for educational purpose and not for residential quarters. The petitioner is permitted to approach the 2nd respondent with materials, within a period of four weeks, from the date of receipt of a copy of this order and the 2nd respondent is directed to consider the said aspects in accordance with Section 83 proviso of Tamil Nadu District Municipalities Act, 1920 and pass fresh orders, within a period of four weeks, from the date of representation of the petitioner. It is made clear that if the petitioner is not approaching the 2nd respondent within a period of four weeks as stated supra and satisfying the 2nd respondent with regard to the payment of property tax, the impugned order can be given effect to.
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> 7. Considering the said submissions, the order dated 04.11.2008 is reviewed and the same is set aside. The writ petition is disposed of accordingly. Consequently, connected miscellaneous petitions are closed.

5. The petitioner was asked to approach the respondent herein with material as to whether the petitioner was eligible for exemption from payment of property tax under Section 83(1)(c) of the Tamil Nadu District Municipalities Act, 1920 within the period of four weeks from the date of the receipt of a copy of the order.

6. The respondent has taken a stand that the petitioner has not been complied with the mandatory requirements of the review order dated 03.08.2010 and was therefore construed to the impugned notice. The learned counsel for the petitioner submits that the impugned proceedings dated 15.09.2016 and the subsequent notice dated 25.11.2016 are liable to be quashed in as much as the petitioner had indeed approached the respondent herein (second respondent in W.P.No.14538 of 2008 and in Review Application No.66 of 2009) vide communication dated 02.09.2010.

7. It is submitted that without referring the representation of the petitioner, the impugned proceedings and notices have been issued by the respondent, thereby, there is a final determination of total tax liability of Rs.32,58,604/- to be paid by the petitioner for the period between second half of 2002-2003 and 2016-2017, failing which, appropriate proceedings would be initiated in terms of Rule 30 to 35, Part - I, Schedule IV to the Tamil Nadu Municipalities Act, 1994.

8. Heard the learned counsel for the petitioner. I have perused the evidence on records and the affidavit and counter affidavit filed by the both parties.

9. The petitioner is a minority educational institution. As per Section 83(1)(c) of the Tamil Nadu District Municipalities Act, 1920, as it stood prior to its amendment in 2018, the buildings used for educational purpose including hostels attached thereto, were exempted from the payment of tax. There is no dispute that the petitioner is an educational institution and therefore, the question of imposing property tax on the buildings of the petitioner cannot be justified.

10. Under these circumstances, this Writ Petition filed by the petitioner deserves to be allowed. At the same time, as per the review order dated 03.08.2010, the respondent was required to pass a fresh order within a period of four weeks from the date of the representation of the petitioner. The petitioner has indeed filed a reply/representation dated 02.09.2010 as is evident from the acknowledgment card filed along with this Writ Petition evidencing the service of aforesaid notice on the respondent pursuant to the direction of this Court in Review Application No.66 of 2009 vide order dated 03.08.2010.

11. Therefore, I set aside the impugned proceedings dated 15.09.2016 issued by the respondent and the subsequent notice dated 25.11.2016, wherein, it has already been decided that the petitioner was in arrears of tax of Rs.32,58,604/- for the period between second half of 2002-2003 and 2016-2017.

12. The respondent is directed to pass a fresh order based on the representation of the petitioner dated 02.09.2010, within a period of six weeks from the date of receipt of a copy of this order. Needless to state, before such order is passed, the petitioner shall be heard.

13. The petitioner is given liberty to file additional documents or representations, if any, together with case laws before the respondent for passing appropriate orders, within a period of three weeks from the date of receipt of a copy of this order.

14. This Writ Petition stands allowed. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Executive Officer,
Muthupettai Town Panchayat,
Muthupettai (Post),
Thiruthuraipoondi Taluk,
Thiruvarur District.

+1cc to Mr.G.Sankaran, Advocate, S.R.No.9252

W.P.No.85 of 2017 and
W.M.P.No.100 of 2017

PCH(CO)
CS/08/04/2021