IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.02.2021
PRONOUNCED ON : 15.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.31211 of 2018
and W.M.P.Nos.36412 & 36414/2018

St.Mary's Elementary School
Represented by the Correspondent
71/1 Krishna Ex.1, Bishop David Nagar,
Vellore 632 001, Vellore District. ..Petitioner

vs

1.The Secretary
Department of Municipal Administration and Water Supply Department,
The Government Secretariat,
Fort St.George,
Chennai 600 009.

2.The Commissioner,
Municipal Administration,
Commissionerate of Municipal Administration,
Chepauk, Chennai 600 005.

3.The Vellore City Municipal Corporation,
Represented by its Commissioner,
Vellore, Vellore District.

4.The District Education Officer,
O/o the District Educational Officer,
Coonoor, Nilgiris District-643102
(R4 impleaded as per order dated 23/09/2019
in WMP 27632/19 in W.P.31211/2018 by KRCBJ) ..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari to call for the records pertaining to the impugned special notice dated 03.08.2018, in Assessment No.035/033/02101, the demand Notice dated 28.08.2018 in Assessment No.035/033/02101 and the consequential Distraint Proceedings dated 12.10.2018 in No.14964 on the file of the 3rd respondent and quash the same.

For Petitioner	:	Mr.Father Zavier Arul Raj, Standing Counsel for M/s.Father Xavier Associates
For R1	:	Mr.W.Inbanathan Addl.Govt.Pleader
For R2 & R3	:	Mrs.P.Shanthi
For R4	:	Mrs.V.Annalakshmi Government Advocate.

O R D E R

The petitioner has challenged the impugned special notice dated 03.08.2018 and the impugned notice for property tax dated 28.08.2018 passed by the 3rd respondent Commissioner, Municipal Corporation, Vellore and connected impugned Distraint proceedings of the 3rd respondent and quash the same .

2. The case of the petitioner is that the petitioner is running an Aided Elementary School and a separate Nursary and Primary School within the same campus in two separate buildings. It is the case of the petitioner that the petitioner is paying property tax for the buildings where Nursary and Primary school (English medium) is being conducted as an unaided school. It is further submitted that in the Nursary and Primary School (English medium) there are children who are admitted from LKG to Vth Standard. That school is governed by the Matriculation system. As far as St.Mary Aided Elementry School is concerned, the petitioner was recognized as early as 23.03.1994 and there is a staff fixation by the 4th respondent and the salary is also given by the 4th respondent.

3. The learned counsel for the petitioner further submits that the buildings where the Elementry School Aided School is situated its entitled for exemption under Section 123 (c) of the Coimbatore City Municipal Corporation Act, 1981. In terms of the amendment to the Coimbatore City Municipal Corporation Act, 1981 vide Act No.6/2018 which was received assent of the Government of Tamilnadu on 25.01.2018 with effect from 2nd half October 2017 also exemption still continues.

4. The learned counsel for the petitioner submits that as per the said amendment also buildings used by an Institute aided by the Government continues to be exempted from the property tax. He submits that only buildings that are used for educational purpose by the Government aided Institutions for conducting self-financing courses are subject to property tax.

5. It is therefore submitted that the proviso to Section 123(c) of the Coimbatore City Municipal Corporation Act, 1981 will apply only to the St.Mary Nursary and Primary Schools where the petitioner is teaching in English Medium by admitting childern from LKG to Vth Standard and is teaching in English Medium. That property alone can be assessed to tax as there is no exemption. However, to the extent, a separate building is used for conducting courses for running the Government Aided Elementary school is concerned, the petitioner is exempted from payment of tax under the said provision.

6. It is further submitted that the Commissioner of Municipal Administration, Chennai, being the Head of the Department has issued a circular dated 25.05.2018 bearing reference No.Roc.No.7234/2014/R1 to all the urban local bodies. The Municipalities and Corporations were directed to implement the Act amendment at once with effect from 2nd half year of 2017-2018. It is submitted that in pursuant to the said implementation of the Act, the Corporation Council also passed a resolution in Resolution No.174 dated 28.03.2018 by publishing relative procedures such as rate of fixation of tax, date of effect of tax, etc.,

7. During the pendency of the 4th respondent, The District Educational Officer, Education department was impleaded by an order dated 23.09.2019 in W.M.P.No.27632 of 2019. The 4th respondent has filed a report which gives the status of the two schools of the petitioner as follows:

S.No	Name of the School	Status	Class	Medium	Address
1.	St.Mary Govt. Aided Elementary School	Christian Minority	I to V	Tamil	No.71/1, Krishna Ex.1, Bishop David Nagar, Vellore - 632 001. Vellore District.
2.	St.Mary's Nursary and Primary School (Private)	Christian Minority	LKG to V	English	No.71/1, Krishna Ex.1, Bishop David Nagar, Vellore - 632 001. Vellore District.

8. The learned counsel for the 2nd and 3rd respondents submits that exemption from payment of property tax cannot be granted to the petitioner since the petitioner was running a Nursary and Primary Schools in English Medium by collecting fees within the same campus. It is therefore submitted that the petitioner is not entitled to exemption from payment of property tax and therefore was liable to pay tax that was assessed in the impugned notice.

9. The learned counsel for the 4th respondent submits that both the schools are being conducted in the same campus and since one of the schools is a self-financing school where fees are collected, the petitioner is not entitled for exemption under Section 123 (c) of the said Act.

10. Heard the learned counsel for the petitioner; learned Additional Government Pleader for R1; learned counsel for R2 & R3 and the learned Government Advocate for R4.

11. The facts are not in dispute. Two schools are running in the same campus. According to the petitioner, both the schools are having a separate building though they are located in the same campus. According to the petitioner, the petitioner is entitled to the exemption even under Section 123(C) as amended by Act No.6/2018. The relevant portion of amendment of Section 123(C) reads as under:

> "(c)buildings used for educational purpose including hostels and libraries run by the Government or corporation or any other local authority or institutions aided by the Government and buildings used for charitable purpose of sheltering the destitute or animals and orphanages, homes and schools for the deaf and dumb, asylum for the aged and fallen women and such similar institutions run purely on philanthropic lines as are approved by the council.
>
> Provided that the buildings used for educational purpose by the Government aided institutions for conducting self-financing courses shall be subject to levy of property tax.''

12. Merely because in the same campus, two schools are being run will not mean that exemption under Section 123 (C) of the Coimbatore City Municipal Corporation Act, 1981 can be denied to both the buildings coming under the same management if one of the building satisfied the criteria.

13. The exemption under section 123 (C) of the Coimbatore City Municipal Corporation Act, 1981 as amended in the year 2018 applies to the following categories of buildings which are used for educational purpose including hostels and libraries run by:-

a) Government; or

b) Corporation; or

c) any other local authority; or

d) institutions aided by the government; and

e) buildings used for charitable purpose of:-

i) sheltering of destitutes;

ii) or animals; and

f) orphanages, homes and school for deaf and dumb, Asylum for aged and fallen women and similar institutions run purely on philanthropic lines as approved by the council;

14. The exception to the exemption is only in the proviso. Under the proviso, buildings used for educational purpose by a government aided ed institutions for conducting self-financing courses alone are to be subject to levy of property tax.

15. Therefore, the exemption cannot be denied to the building of the petitioner where St Mary Government Aided Elementary School is being run by the petitioner unless there is any material to suggest that self-financing courses were being conducted in the said building. Sine qua non for taxing such building in terms of the proviso, there must be self-financing courses offered by the petitioner.

16. In view of the above, the impugned special notice dated 03.08.2018 and the impugned notice dated 28.08.2018 demanding property tax, are liable to be quashed. However, in case it comes to the knowledge of the first to third respondents that the petitioner is conducting any self financing course in the building where it is running St.Mary Govt.Aided Elementary School, appropriate tax may be demanded from the petitioner in accordance with law. It is also made clear that the petitioner is liable to pay tax on the building where it is running St.Mary's Nursary and Primary School (Private).

17. This writ petition is allowed with the above observation. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Secretary
Department of Municipal Administration and Water Supply Department,
The Government Secretariat,
Fort St.George,
Chennai 600 009.

2.The Commissioner,
Municipal Administration,
Commissionerate of Municipal Administration,
Chepauk, Chennai 600 005.

3.The Commissioner,
The Vellore City Municipal Corporation,
Vellore, Vellore District.

4.The District Education Officer,
O/o the District Educational Officer,
Coonoor, Nilgiris District-643102

+2cc to Fr.Xavior Associates, Advocate, Sr.No.9052
+1cc to the Government Pleader, Sr.No.5923 & 8822

Pre-delivery Order in
W.P.No.31211 of 2018 and
W.M.P.Nos.36412 & 36414/2018

AK.I(CO)
CB(29/04/2021)