BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **10.03.2021**

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THE HONOURABLE MR.JUSTICE **V.PARTHIBAN**

W.P.(MD)No.3845 of 2021
and
W.M.P.(MD) No.3069 of 2021

Good Shepherd Evangelical Mission,
represented by its Chairman Pastor Gideon Jacob,
having its office at P.O.Box 1000,
Subramaniyapuram,
Trichy 620 020. .. Petitioner

Vs

Government of Tamilnadu,
represented by the Secretary,
Revenue and Disaster Management Department,
Urban Land Ceiling and Urban Land Tax Wing,
ULC III (2) Section,
Fort.St.George,
Chennai 600 009. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent relating to the impugned order G.O (Ms).No.520 dated 23.09.2020 and quash the same and direct the respondent to grant the petitioner exemption under Section 27(1) of the Tamil Nadu Urban Land Tax Act as prayed in its application dated 17.10.2005.

For Petitioner : Mr.Ramakrishnan Senior Counsel for Mr.K.Saravaan

For Respondent : Mr.R.Murugan
Additional Government Pleader

ORDER

The petitioner, Good Shepherd Evangelical Mission Private limited, is a company incorporated under the provisions of the Indian Companies Act, 1956. According to the petitioner mission, it is a charitable institution engaged in educational, religious and charitable work, providing relief to the poor and needy regardless of colour, caste, religion or creed. The petitioner mission has been duly registered as a charitable institution under Section 12A (a) of the Income Tax Act, 1961 and owns about 39 grounds and 888 sq.mts of Government land within the Corporation limit of Trichy City and the lands were assessed to urban land tax under the Tamilnadu Urban Land Tax Act, 1966.

2.According to the petitioner, as per Section 27 (1) of the Tamilnadu Urban Land Tax Act, the Government has power to provide exemption to any class of persons from payment of urban land tax. In exercise of such power, the Government has issued G.O.Ms.No.1834, dated 29.10.1983, exempting certain lands used or owned by educational, religious, charitable and philanthropic institutions from the payment of urban land tax.

3.The petitioner mission, which is admittedly a charitable institution, applied for exemption under Section 27 (1) of the Tamilnadu Urban Land Tax Act by an application dated 17.10.2005. The respondent periodically had been calling upon the petitioner to furnish particulars in relation to their application seeking exemption at regular intervals. Whenever any queries raised and clarification sought, the petitioner, at once, furnished all the particulars as required by the respondent officials. For several years, the respondent had been dragging their feet without taking any decision in the matter.

4.While matter stood thus, the respondent has issued G.O.Ms.No.520, dated 23.09.2020, finally rejecting the application filed by the petitioner seeking exemption of payment of urban land tax. According to the rejection order that the petitioner was not a public trust, but was a private limited company registered under the Companies Act, 1956, not therefore qualified for grant of exemption in terms of the provisions of the Act. The rejection order further reasoned that the petitioner did not spend at least 90% of its net income on charitable activities and also did not satisfy the norms that have been prescribed in G.O.Ms.No.1834 dated 29.10.1983. Challenging the order dated 23.09.2020, rejecting the request of the petitioner seeking exemption from the payment of urban land tax, the petitioner is before this Court.

5.Mr.Ramakrishnan, learned Senior Counsel appearing for the petitioner would submit that the impugned order of the respondent is liable to be set aside on the sole ground that the petitioner has not been afforded any opportunity of hearing before the impugned decision was taken by the Government. The learned Senior Counsel would refer to and rely on the averments and the grounds contained in the affidavit filed in support of this writ petition to impress upon this Court as to how the respondent did not appreciate the claim of the petitioner in proper prospective in the course of the decision making process preceding passing of the impugned Government Order. According to the learned Senior Counsel, the issue as to whether the petitioner institution is liable to pay urban land tax or it should be granted exemption, has been hanging fire for several years and all along, the petitioner has been given the protection of interim orders and suddenly in pursuance of the impugned order dated 23.09.2020, rejecting the claim of the petitioner for exemption, a charitable institution, like the petitioner has been fastened with the liability of payment of urban land tax for several years in a row.

6.Mr.R.Murugan, learned Additional Government Pleader has entered appearance on behalf of the respondent and was directed to ascertain as to whether the petitioner has been provided with any opportunity before the impugned decision was taken by the respondent. *De hors* the direction, this Court has independently perused the impugned order dated 23.09.2020 and did not find that any opportunity being extended to the petitioner before the decision was taken by the respondent. The impugned order did not disclose issuance of notice to the petitioner nor was there any reference to the petitioner being heard before the order came to be passed in the matter.

7.It is trite in law to hold that before any adverse decision is taken by the State Authority, a rudimentary principle of fairness demand affording an opportunity of hearing to the party, which is likely to be affected by their decision, it is imperative that in any decision making process, procedural fairness has to be followed mandatorily and in the absence of the same, the order would become vulnerable to judicial interference. In this case, this Court finds that no opportunity has been extended to the petitioner and in that view of the matter, without dealing with any of the other legal objections of the petitioner, this Court constrained to allow the Writ Petition on this ground alone. In fact, the learned Additional Government Pleader, who was directed by this Court to ascertain as to whether the petitioner herein had been given any opportunity or not, when the matter was taken up for hearing finally, could not vouch for the fact of any opportunity being extended to the petitioner before the impugned order was passed.

8.In the said consideration, the Writ Petition is allowed. The impugned Government Order in G.O.Ms.No.520, dated 23.09.2020, is hereby set aside and the matter is remanded back to the 1st respondent for fresh consideration. The respondent is directed to revisit the exemption application submitted by the petitioner mission by affording reasonable opportunity to the petitioner including grant of personal hearing to the Mission Officials and pass orders thereupon.

9.It is open to the petitioner herein to submit any materials in their possession to persuade the authority for grant of exemption in their favour and the respondent may consider the same also and a final order is to be passed in the matter within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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ASSISTANT REGISTRAR (P AND A)

TRUE COPY

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SUB ASSISTANT REGISTRAR (CS)

mm/cmr

To

The Secretary to Government of Tamilnadu,
Revenue and Disaster Management Department,
Urban Land Ceiling and Urban Land Tax Wing,
ULC III (2) Section, Fort.St.George,
Chennai 600 009.

1CC TO MR. K. SARAVANAN, ADVOCATE SR 9977
1CC TO THE SPL GOVT PLEADER SR 10610

TR
3/5/2021
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