BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2021

CORAM

THE HONOURABLE MR.JUSTICE T. S. SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

W.A.(MD)No.187 of 2018

and

C.M.P.(MD) No.1038 of 2018

The Commissioner,
Nagercoil Municipality,
Nagercoil, Kanyakumari District. ... Appellant/2nd Respondent

Vs.

1.Rev. Dr.Russel Raj Bakthinathan,
Director, Anbu Illam,
No.48-B-5, Paramathalingapuram,
Vettoornimadam Post,
Kanyakumari District. ... 1st Respondent/Writ Petitioner

2.The Commissioner of Municipal Administration,
Office of Commissioner of Municipal Administration,
Chepauk, Chennai. ... 2nd Respondent/1st Respondent

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.12767 of 2010, dated 05.04.2017.

Prayer in WP(MD). 12767 of 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a WRIT OF CERTIORARI, to call for the records pertaining to the impugned order in Assessment No. 2599 dated 08.10.2010 on the file of the respondent No.2 and quash the same as illegal.

For Appellant	:	Mrs.S.Srimathy Standing Counsel
For Respondent No.1	:	Mr.T.Lajapathi Roy
For Respondent No.2	:	Mr.R.Baskaran Standing Counsel for Government

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J U D G M E N T

(Judgment of the Court was delivered by T. S. SIVAGNANAM, J.)

This Writ Appeal by the Nagercoil Municipality, questions the correctness of the order and direction issued by the learned Single Judge in W.P.(MD)No.12767 of 2010, dated 05.04.2017.

2.The first respondent/Writ Petitioner is a Trust, which challenges the assessment of the writ petitioner's building for property tax. The learned Single Bench after taking note of the factual position allowed the Writ Petition holding that as per the provision 83(c) of Tamil Nadu District Municipalities Act, 1920, the building used for educational purpose, including hostels attached thereto are exempted from payment of property tax. Section 83(c) reads as follows:

> "83 (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;"

Subsequently, there has been an amendment, which has included the school for the deaf and dump.

3.There are two aspects in the matter of exemption. One is total exemption from the assessment, levy and collection of property tax and the other category is where because of the benefit granted under the statute, the owner of the building can claim for exemption. In the second category of cases, the onus is on the persons, who claimed exemption from payment of property tax or concession in payment of property tax, to establish that he will fall under the four corners of the exemption.

4.The writ petitioner's case is that they fall under the second category since they are running an educational institution for differently abled. If they are able to prove specifically that they fall within Section 83(c) of the Act, then the Municipality should grant the benefit of exemption either for full or part thereof to the building owned by the Trust. Therefore, the first respondent/writ petition should approach the appellant Municipality by way of filing appropriate application along with supporting records, after which, the Municipality should conduct inspection of the building, consider all the document, which they may place and then take a decision, considering the nature of the activities carried out by the writ petitioner and the manner in which the building is put to use. After considering all these aspects, a reasoned decision be taken in accordance with law.

5.Accordingly, the Writ Appeal is partly allowed by modifying the order of the learned Single Bench with a direction to the first respondent/writ petitioner to approach the appellant Municipality with a request for grant of exemption as mentioned above and such application shall be filed before the appellant Municipality within a period of three months from the date of receipt of a copy of this order, after which, the appellant Municipality shall take note of the above discussion and proceed to take a decision on merits and in accordance with law. Till then, the *status quo* prevailed pending the Writ Petition shall be maintained. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sj

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of Municipal Administration,
Office of Commissioner of Municipal Administration,
Chepauk, Chennai.

+1 CC to M/s.T.LAJAPATHY ROY, Advocate (SR-21583[F] dated 07/07/2021)

W.A.(MD)No.187 of 2018
06.07.2021

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