IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	03.02.2022
PRONOUNCED ON	04.03.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.23975 OF 2021

(THROUGH VIDEO CONFERENCING)

Hosur Industries Association,
Plot No.159-A, SIPCOT Industrial Complex,
Hosur - 635 126.
Rep. by its authorized signatory
Mr.P.Arulanandan. ... Petitioner

Vs.

1. State of Tamil Nadu,
   Rep. by the Secretary,
   Municipal Administration and Water Supply Department,
   Secretariat, Chennai - 600 009.

2. The Commissioner,
   Hosur City Municipal Corporation,
   Bagalur Road, Opposite to Thillai Nagar,
   Hosur - 635 109.

3. The District Collector,
   Krishnagiri,
   Collectorate, Krishnagiri,
   Tamil Nadu - 635 001.

4. State Industries Promotion Corporation of Tamil Nadu,
   Rep. by its Managing Director,
   19-A, Rukumani Lakshmipathy Road,
   Post Box No.7233, Egmore,
   Chennai - 600 008. ... Respondents

(R4 impleaded vide order dt. 12.01.2022 made in W.M.P.No.241/2022)

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records in Na.Ka.No.5483/2018/AI, dated 25.01.2021 on the file of the second respondent and quash the same and consequently direct the second respondent to fix the property tax providing for exemption / concession in the tax levied on the members of petitioner Association in accordance with Section 124 of the Coimbatore City Municipal Corporation Act, 1981 read with Section 8 of the Hosur City Municipal Corporation Act.

For Petitioner	:	Mr.G.Balasubramanian
For R1	:	Mr.R.Siddharth, Government Advocate
For R3	:	Mr.S.Ravichandran, Additional Government Pleader
For R2	:	Mr.N.Subbarayalu

O R D E R

This Writ Petition has been filed by the petitioner challenging the impugned communication dated 25.01.2021 bearing reference No.Na.Ka.No.5483/2018/A1 of the second respondent and quash the same and consequently direct the second respondent to fix the property tax providing for exemption/concession in the tax levied on the members of petitioner Association in accordance with Section 124 of the Coimbatore City Municipal Corporation Act, 1981 (hereinafter referred to as "Coimbatore Act") read with Section 8 of the Hosur City Municipal Corporation Act, 2019 (hereinafter referred to as "Hosur Act").

2. By the impugned communication dated 25.01.2021, the second respondent has rejected the request of the petitioner for grant of special exemption under the provisions of the Coimbatore Act as made applicable to levy of tax under the provisions of Hosur Act.

3. It is the specific case of the petitioner that the petitioner was under the Town Panchayat and thereafter under the purview of the Hosur Act which incorporates the provisions of the Coimbatore Act as far as levy and collection of property tax.

4. The learned counsel for the petitioner submits that the petitioner is an Association representing the interest of Industrial undertaking located in the State Industries Promotion Corporation of Tamil Nadu Limited (hereinafter referred to as "SIPCOT") Industrial Area. It is submitted that infrastructure such as water supply, sewerage and drainage arrangements is being provided by SIPCOT. W.M.P.No.241 of 2022 was filed for impleading SIPCOT as the fourth respondent which was allowed by an order dated 12.01.2022.

5.It is submitted that since vital service and infrastructure are being provided by the SIPCOT to the members of the petitioner's association, the impugned order/communication of the second respondent denying exemption under Section 124 of the Coimbatore Act under the provisions of the Hosur Act was incorrect.

6. The learned counsel for the petitioner furthe4r submits that in terms of Section 124 of the Coimbatore Act, the members of the petitioner Association were entitled for special exemption as the entire area in the SIPCOT Industrial Area was not deriving any service from the first to third respondents.

7. It is the case of the Petitioner that under Proviso (a) to Section 124 of the Coimbatore Act read with Section 8 of the Hosur Act, the second respondent is empowered to provide property tax concession to the members of the petitioner Association. It is submitted that the title of Section 124 of Coimbatore Act is "Special Exemptions and Alternative Bases of Property Tax", clearly indicates that the provision talks about exemptions provided to property tax levied under the Act by the respondents and not to water or sewerage and lighting tax.

8. Hence, applying rule of ejusdem generis "such tax" mentioned in proviso (a) could only refer to property tax and not to mere water or sewerage tax as no such differentiation is made throughout the provision and especially when the entire Part of the Act talks about property tax only.

9. It is further submitted that the provisions of Chennai City Municipal Corporation Act, 1919 (hereinafter referred to as "Chennai Act") are pari materia to the provisions of Coimbatore Act. It was further pointed out that as far as property tax is concerned under Section 99 of the Chennai Act, there are tax for (i) general purposes, (ii) drainage (iii) lighting. However, the Coimbatore Act does not make such classification for levy of property tax. It is submitted that the proviso (a) to Section 102 of Chennai Act states "drainage tax or lighting tax" while the proviso (a) to Section 124 of Coimbatore Act states "such tax" meaning property tax and not drainage or lighting tax.

10. It is submitted that in the decision of this Court in Corporation of Madras Vs. R. Sundaram and another, (1971) 2 MLJ 365, it was held that “The exemption in proviso (a) to Section 102 presupposes a levy which is valid, but from which exemption may be granted in particular circumstances.” and that “The council which is vested with a power under proviso (a) to Section 102 has got a duty to exercise it, more especially when the statute conceives it for the benefit of an area or section of the city. The law requires that the Council in exercise of that power should consider whether, because a particular area is not provided with water and drainage system, it should be exempt from water and drainage tax so to speak. If the Council resolves in favour of exemption of the area, it has, before it gives effect to the exemption, to seek and secure the sanction of the State Government. The complaint of the first respondent is that the Council has failed even to respond to his several letters inviting its attention to the failure to provide for water and drainage system in West Mambalam area and to consider in the context whether the area should not be exempted from property tax corresponding to the extent of such failure. We are inclined to think that there is substance in the contention and that is what the learned Judge felt and quite rightly. It is a well settled principle that where a public body is vested with a power or discretion, it is for exercise and not for inaction and it is especially so, when the power or discretion has been vested for the benefit of those who will be affected by its non-exercise”.

11. It is also submitted that the above ratio was referred in the decision of this Court in Theosophical Society Vs. Chennai Metro Board and other, dated 26.02.2020, in W.P.Nos.4744 to 4753 of 2009, wherein, it was held that “such exemption can be granted with the sanction of the Government on the ground that such area is not deriving any or the full benefit from the water supply or sewerage system”.

12. For easy reference, a comparison of the provisions of the Coimbatore Act and Chennai Act was invited as follows:-

Chennai Act	Coimbatore Act
The Property Tax	The Property Tax
Charging Section 99. Description and class of property tax:- (1) If the council by a resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within the city save those exempted by under this Act or any other law. The property tax may comprise--- (a) a tax for general purposes; (b) a drainage tax for the purpose of defraying the expenses connected with the drainage system of the city; (c) a lighting tax for the purpose of defraying the expenses connected with the lighting of the city: Provided that where the drainage tax is levied the council shall declare what proportion of the tax is levied in respect of drainage works and the proportion so declared shall also be specified in the notice published under sub-section (2) of section 98-A	Charging Section 121. Description of Property Tax:- (1) If the council by resolution determines that a property tax for general purposes shall be levied, such tax shall be levied on all buildings and lands within the city save those exempted by or under this Act or any other law.
101.General Exemption --- The following buildings and lands shall exempt from the property tax.	123. General Exemption from property Tax – The following buildings and lands shall be exempt from the property tax

102.Special Exemption and alternative of Property Tax--- Proviso (a) (a). the council may, with the sanction of the State Government, exempt any local area from the whole or a portion of drainage tax or of the lighting tax on the ground that such area is not deriving any or the full benefit from the drainage or from the lighting system	124.Special exemptions and alternative of Property Tax Proviso (a) the council, may with the sanction of the Government, exempt any local area, from the whole portion of such tax on the ground that such area is not deriving any or the full benefit from the water-supply and drainage or from the lighting system;

13. It is submitted that in view of the foregoing, the second respondent Commissioner who acts on behalf of council (due to delay in local body elections) under the Hosur Act is clearly empowered to consider the concession sought for by the petitioner and grant such concession with the sanction of the Government.

14. The learned counsel for the petitioner submits that the impugned order dated 25.01.2021 is clearly unsustainable under law and hence is liable to quashed. The learned counsel for the petitioner therefore prays for a direction to the second respondent to fix the property tax providing for exemption/concession in the tax levied on the members of petitioner Association in accordance with Section 124 of the Coimbatore Act read with Section 8 of the Hosur Act.

15. Appearing on behalf of the second respondent, the learned counsel submits that for levy and collection of tax under the Hosur Act, provisions of Coimbatore Act is applicable. It is submitted that under Section 121 of the Coimbatore Act, if the Council by resolution determines that a property tax for general purposes shall be levied, such tax shall be levied on all buildings and lands within the City save those exempted by or under the Coimbatore Act or any other law.

16. As per Sub Clause (2) to Section 121 of the Coimbatore Act, such property tax shall be levied at such percentage of the annual value of buildings, or lands which are occupied by, or adjacent and appurtenant to buildings or both, as may be fixed by the Council subject to the provisions of Section 118 of the

Coimbatore Act.

17. It is submitted that there is no exemption under Section 123 of the Coimbatore Act. It is therefore submitted that the Special Exemption under Section 124 of the Coimbatore Act has been misconstrued by the petitioner. In this connection, the learned counsel for the respondents has drawn attention to following passage from the counter affidavit which reads as under:-

> I submit that the water supply, drainage and lighting provides under Chapter VII of the Act 1981. The provisions of this Chapter read with Section 124(a), it gives the clear meaning that Proviso (a) of Section 124, indicates the payment of Special exemption for water and drainage tax and this proviso is not provided for the special exemption for property tax for the building and land.

18. He further submits that proviso to Section 124 cannot be construed to claim special exemption in favour of the members of the petitioner. It is therefore submitted that the present Writ Petition is devoid of merits and is liable to be dismissed.

19. The learned counsel for the second respondent submits that there is no ambiguity in the language in Section 124 of the Coimbatore Act and therefore, there is no scope for granting special exemption to the petitioner. In this connection, a reference was made to the decision of the Hon'ble Supreme Court in Vemareddy Kumaraswamy Reddy &Anr Vs. State of Andhra Pradesh, (2006) 2 SCC 670.

20. The learned counsel for the respondents further submits that the petitioner Association cannot represent the case of its members. He further submits that the Writ Petition on behalf of the members of the Association is not maintainable. In this connection, a reference was made to the Hon'ble Full Bench Judgment of the Allahabad High Court in Umesh Chand Vinod Kumar and ors Vs. Krishi Utpadan Mandi Samiti and Ors, AIR 1984 All 46.

21. He also further submits that the Hon'ble Full Bench had considered the following questions referred to it:-

(a) Whether an association of persons, registered or unregistered can maintain a petition under Article 226 of the Constitution for the enforcement of the rights of its members as distinguished from the enforcement of its own rights?

(b) Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one petitioners, not connected with each other as partners or those who have no other legally subsisting jural relationship, where the questions of law and fact, Involved in the petition, are common?

(c) In case the answer to question No.1 is in the affirmative, whether only one set of court-fees would be payable on such petition or each such individual petitioner has to pay court-fees separately?

(d) In case answer to question No.1 is in the negative, whether the defect of misjoinder of several petitioners in the writ petition can be cured by requiring each such petitioner to pay separate court-fees?

(e) Whether the petition is maintainable for questioning similar actions taken by different Mandi Samitis independently of each other in cases where the aggrieved party seeks relief against each such committee on identical grounds?

22. The learned counsel for the respondents submits that the above questions were answered as follows:-

(a) The position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights?

(b) In case of a public injury leading to public interest litigation; provided the association has some concern deeper than that of a wayfarer or a busybody, i.e., it has a special interest in the subject-matter.

(c) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the Court in such proceedings will be binding on the members.

(d) In other cases an association, whether registered or unregistered, cannot maintain a petition under Article 226 for the enforcement or protection of the fights of its members, as distinguished from the enforcement at its own rights.

23. That apart, the learned counsel for the respondents has drawn attention to Paragraphs 8 and 9 of the counter affidavit, wherein, it is stated that "water supply, drainage and lighting provides under Chapter VII of the Act 1981". It is submitted that the provisions of Chapter read with Section 124(a) of the Coimbatore Act gives a clear indication that special exemption from payment of tax in proviso (a) of Section 124 of the Coimbatore Act is confined to water and drainage tax and this proviso is not intended for grant of a special exemption from property tax on the lands and buildings.

24. It is submitted that the second respondent is not collecting water and drainage tax and lighting tax from the members of the petitioner Association and therefore, sanction of special exemption from lands and buildings tax does not arise either in part or in full. It is therefore submitted that this provision for special exemption does not relate to the assessment of property tax.

25. It is further submitted that the petitioner cannot claim special exemption of property tax on lands and buildings under proviso (a) to Section 124 of the Coimbatore Act. It is therefore submitted that the petitioner Association has wholly misconstrued this provision for special exemption for the lands and buildings under Section 124 of the Coimbatore Act.

26. In response, with regard to the issue of maintainability issue raised by the learned Government Advocate for the first to third respondents, the learned counsel for the petitioner relied

on the decision of this Court in Vellakoil Vattara Vari Seluthuvor Nalvalvu Sangam Vs. State of Tamil Nadu, 2006 (2) CTC 705, wherein, it was held by the Division Bench that "... Petitioner/Appellant Sangam, being registered and formed to safeguard the interest of its members, can very well question the same by filing the Writ Petition". Furthermore, the foregoing case relates to levy of property tax and hence it is needless to say that the said ratio is applicable to the facts and circumstances of the present case and thus the instant Writ Petition filed by the petitioner Association is maintainable.

27. It is further submitted that decision of the Allahabad High Court in Umesh Chand Vinod Kumar and Ors Vs. Krishi Upadan Mandi Samiti. Bharthana and Anr, AIR 1984 All 46 relied by the learned Government Advocate for the first to third respondents challenging the maintainability of this Writ Petition, is not applicable to the petitioner Association as it is authorized under Rule 3(f) of its Byelaws to take legal action on behalf of its members, so that, any order passed by the Court in such proceedings will be binding on the members.

28. As regards, the Judgment of the Hon'ble Supreme Court in Union of India State of Uttar Pradesh, (2007) 11 SCC 324 relied by learned Government Advocate for the first to third respondents, the learned counsel for the petitioner submits that the said judgment has no resemblance or nexus to the facts and circumstances of the instant Writ Petition and hence, the ratio is not applicable to the instant case.

29. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the first to third respondents and the learned counsel for the fourth respondent SIPCOT.

30. I have perused the impugned order and the case laws cited. I have also perused the provisions of the Coimbatore City Municipal Corporation Act, 1981, Hosur City Municipal Corporation Act, 2019 and Chennai City Municipal Corporation Act, 1919.

31. The members of petitioner Association have their industrial units in the Hosur SIPCOT Industrial Area. Earlier, they were under Village Panchayat limits and a concessional property tax was levied in terms of G.O.Ms.No.1619 dated 06.07.1974. All the amenities for industries within SIPCOT Area

were not provided by the erstwhile Village Panchayat.

32. When the municipal limits were extended, the properties in SIPCOT area came under Hosur Municipality in terms of Circular in Na.Ka.No.24697/2011/R1, dated 30.08.2017 of the Commissioner of Municipal Administration with effect from 01.04.2017. The said Circular increased the property tax. Aggrieved by the same, the petitioner had sent a representation dated 14.11.2017. Later, W.P.No.29845 of 2018 was filed before this Court. Vide an order dated 22.01.2019 in W.P.No.29845 of 2018, the respondent was directed to consider the said representation.

33. After a lapse of two years and subsequent to enactment of the Hosur City Municipal Corporation Act, 2019, on 25.01.2021, the second respondent issued the impugned order rejecting the representation of the petitioner by holding that there are no provisions under any statute which empowers the second respondent to levy concessional property tax for industries situated within SIPCOT.

34. The reasons given in the impugned communication of the second respondent is that as per the Circular in Na.Ka.No.24697/2011/R1, dated 30.08.2017 of the Commissioner of Municipal Administration, the property tax for all the houses, commercial buildings and the factories situated in the SIPCOT industrial was enhanced with effect from 01.04.2017 and the enhancement was later cancelled pursuant to the directions of the Government.

35. It has also been stated in the impugned communication that generally, the property tax is re-determined by all the Local Bodies in Tamil Nadu based on the G.O. to be issued by the Government from time to time, but, the property tax is determined for the factories situated in the SIPCOT Industrial Area based on the provision of levy in the Corporations Act and there is no provision in the Corporations Act for levying minimum property tax for the factories situated in the SIPCOT Industrial Area.

36. As per Section 8 of the Hosur Act, all the provisions of the Coimbatore Act, 1981, including the provisions relating to the levy and collection of any tax or fee are hereby extended to and shall apply, mutatis mutandis to the corporation and the Coimbatore Act, 1981 shall, in relation to the corporation, be

read and construed as if the provisions of this Act had formed part of the Coimbatore Act, 1981.

37. The definitions of expression in the Hosur Act are incorporated from the definitions in the Coimbatore Act. This is evident from a reading of the Sub Section 2 to Section 2 of the Hosur Act which reads as under:-

> Section 2.
> (1)…………
> (2) All words and expressions used in this Act and not defined but defined in the Coimbatore City Municipal Corporation Act, 1981 (hereinafter referred to as the 1981 Act), shall have the meanings, respectively, assigned to them in the 1981 Act.

38. Chapter V of the Coimbatore Act deals with taxation. Section 117 of the Coimbatore Act contemplates different kinds of tax as detailed below:-

i. a property tax;
ii. a profession tax;
iii. a tax on carriages and animals;
iv. a tax on carts;
v. a tax on advertisements other than advertisements published in the newspapers, and,
vi. a duty on certain transfer of property in the form of surcharge on stamp duty.

39. The above provision is pari-materia with Section 9 of the Chennai Act. The rate of tax is to be determined by the Council by a Resolution. A special dispensation is provided for the same under Section 118 of the Coimbatore Act. Section 121(1) of the Coimbatore Act which deals with "Description of Property Tax states that if the Council, by a resolution, determines that a property tax for "general purposes" shall be levied, such tax shall be levied on all buildings and lands within the city save those exempted by or under this Act or any other law.

40. The description of property tax and method of assessment of property tax is provided in Section 121 and Section 122 of the Act which reads as under:-

121. Description of property tax .—	122. Method of assessment of property tax .—

(1) If the council by resolution determines that a property tax for general purposes shall be levied, such tax shall be levied on all buildings and lands within the city save those exempted by or under this Act or any other law.	(1) every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises:
(2) Save as otherwise provided in this Act, the property tax shall be levied at such percentage of the annual value of buildings, or lands which are occupied by, or adjacent and appurtenant to buildings or both, as may be fixed by the council subject to the provisions of section 118. Provided that the aggregate of the percentages so fixed shall not in the case of any land or building be less than fifteen and a half per cent or greater than thirty five percent of its annual value.	(2) the annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction, in the case of buildings, of ten per cent of that portion of such annual rent which is attributable to the buildings alone, apart from their sites and he adjacent lands occupied as an appurtenance thereto; and the said deduction shall be in lieu of all allowances for repairs or on any account whatever,
(3) For the purpose of assessing the property tax the annual value of any building or land shall be determined by the commissioner: Provided that the annual value of any building or land the tax for which is payable by the commissioner shall be determined by the Mayor.	Provided that — (a) in the case of — (i) any State Government or railway building; or
(4) (a) save as otherwise provided in clause (b), the council shall, in the case of lands which are not used exclusively for	

agricultural purposes and are not occupied by, or adjacent and appurtenant to buildings, levy property tax on such lands at such rates as it may fix, having regard to its location and subject to the minimum and maximum rates per square feet as may be prescribed by the Government. (b) In the case of railway lands, which are not used exclusively for agricultural purposes and are not occupied by, or adjacent and appurtenant to, buildings, the council shall levy property tax on the annual value of such lands at a such percentages which shall not exceed seventeen and one-third per cent of their annual value and the Government shall have power to make rules regarding the manner in which the person or persons by whom and the intervals at which the annual value of such lands shall be estimated or revised and they may also by such rules, restrict or modify the application of the provisions contained in Schedule II to such lands. (5) (a) the council shall, in the case of lands used exclusively for agricultural purposes, levy property tax at such proportions as it may fix, of the annual value of such lands calculated in the manner specified in clause (b) :	(ii) any building of a class not ordinarily let the gross annual value of which cannot, in the opinion of the commissioner, be estimated. the annual value of the premises shall be deemed to be six per cent of the total of the estimated market value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than ten per cent of such costs; (b) in calculating the value of any land or building, the value of any plant or machinery, on such land or in such building shall be excluded, but all fixtures including lifts and electric and other fittings which add to the convenience of the building shall be valued, subject in the case of a lift to such deduction from the valuation as may be prescribed by the council on account of the cost or repairs to maintenance of and attendance on, such lift:

Provided that the proportion shall not exceed the maximum if any, fixed by the Government.

(b) (i) In the case of lands held direct from Government on ryotwari tenure or on lease or license, the assessment, lease amount, royalty or other sum payable to Government for the lands together with any water-rate which may be payable for their irrigation, shall be taken to be the annual value;

(ii) In the case of lands held on any tenure of the than ryotwari tenure, the annual rent payable to the landholder, sub-landholder or any other intermediate land-holder holding on an under tenure created, continued or recognized by a landholder or sub-landholder, as the case may be, by his tenants together with any water-rate which may be payable for their irrigation, shall be taken to be the annual value; and where such lands are occupied by the owner himself or by any person holding the same from his free of rent or at a favourable rent, the annual value shall be calculated according to the rates or rents usually paid by occupancy ryots for ryoti lands in the neighbourhood with similar advantages, together with any water-rate which may be payable for the irrigation of the lands so occupied;

Provided further that where the annual value of any land or building is attributable partly to the use of such land or building or any portion thereof for the display of any advertisement or advertisements and tax is levied under this Act in respect of such advertisement or advertisements the annual value of such land or building for the purpose of assessing the property tax thereon shall be ascertained as if such land, building or portion is not used for the display of such advertisement or advertisements.

(3) The Government shall have power to make rules regarding the manner in which, the person or by persons by whom and the intervals at which, the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation, shall be estimated or revised, in any case or class of cases to which clause (a) of the proviso to subsection (2) applies, and they may, by such rules, restrict or modify the application of the provisions contained in Schedule II to such case or class of cases.

(iii) In the case of lands, he assessment of rent of which is paid in kind, the annual value shall be calculated according to the rates of rent established or paid for neighbouring lands of a similar description and quality, together with any water-rate which may be payable for the irrigation of the lands first mentioned; (c) If such lands be occupied by tenants, the council shall levy the taxes in equal shares, from the landholder and the tenant respectively; (d) Subject to any rules which the Government may make in this behalf, the commissioner shall have the power to require the staff of the Land Revenue Department to collect the taxes due to the council in respect of such lands on payment of such remuneration not exceeding five per cent of the gross sum collected as the district collector having jurisdiction over the City of Coimbatore may, by general or special order determine.	

41. As per Sub Section 2 to Section 121 of the Coimbatore Act, the property tax shall be levied at such percentage of the annual value of buildings, or lands which are occupied by, or adjacent and appurtenant to buildings or both, as may be fixed by the Council subject to the provisions of Section 118 of the Act. The method for determining the property tax has been provided in Section 122 of the Coimbatore Act. Thus, it would not be correct to hold that there is no classification under the Coimbatore Act.

42. Section 123 of the Coimbatore Act deals with the “special exemptions and alternative bases of property tax”. Under Section 123 of the Coimbatore Act, certain categories of buildings are exempted. They are as follows:-

i. places set apart for public worship and either actually so used or used for no other purposes;

ii. choultries for the occupation of which no rent is charged and choultries the rent charged for the occupation of which is used exclusively for charitable purposes;

iii. Buildings used for educational purpose including hostels attached thereto and places used for the 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;

iv. such ancient monuments protected under the Ancient Monuments Preservation Act, 1994 (Central Act VII of (904) and such ancient and historical monuments declared by or under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Central Act XXIV of 1958) to be of national importance and also such ancient monuments and archaeological sites and remains protected under the Tamil Nadu Ancient and Historical Monuments and Archeological Sites and Remains Act, 1966 (Tamil Nadu Act XXV of 1966) or parts thereof as are not used as residential quarters or public office;

v. charitable hospitals and dispensaries but not including residential quarters attached thereto;

vi. such hospitals and dispensaries maintained by railway administration as may from time to time be notified by the Government, but not including residential quarters thereto;

vii. burial and burning grounds included in the book kept in the municipal office under section 404;

viii. any building or land the annual value of which is less than one hundred and nineteen rupees provided that the owner thereof is not liable to profession tax or income-tax and provided further that no other building or land is owned by him or the aggregate annual value of all the buildings and lands owned by him is less than one hundred and nineteen rupees;

ix. the bed of any river or canal or any river or canal belonging to Government and which do not provide any income to the Government or any Government land set apart for recreation purposes of any other Government property being neither building nor land from which in the opinion of the Government any income could not be derived, as may from time to time be notified by the Government;

x. any building or land owned by the Central Government:

43. The industrial units situated within the SIPCOT Industrial area did not come within the purview of any of the exempted categories in Section 123 of the Coimbatore Act.

44. Section 118 of Coimbatore Ac is titled as "Power of Control of Government". As per Section 118 of the Coimbatore Act, any resolution of the Council determining to levy a tax shall specify the rate at which and the date from which any such tax shall be levied.

45. Section 124 of the Coimbatore Act deals with "Special Exemptions and Alternative Bases of Property Tax". The first part deals with rates of property tax. The rates of property tax fixed by the Council may be proportionate to the value of each building or land. It may advance in systematic progression with the value of the building or land. It shall in no case decrease as the value of the building or land increases. When a progressive rate has been adopted by the Council, it shall prescribe the principles (as that a certain sum which shall be tax free shall be deducted from the assessment of each building or land or that the progression shall be from a certain percentage in the lowest to a certain percentage in the highest class) and the precise number and limits of each class. Section

124 of the Coimbatore Act reads as under:-

> 124. Special exemptions and alternative bases of property tax .— The rates of property tax fixed by the council may be proportionate to the value of each building or land or may advance in systematic progression with the value of the building or land, but shall in no case decrease as the value of the building or land, increases. When a progressive rate has been adopted by the council, it shall prescribe the principles of classification (as that a certain sum which shall be tax free shall be deducted from the assessment of each building or land or that the progression shall be from a certain percentage in the lowest to a certain percentage in the highest class) and the precise number and limits of each class:
>
> Provided that
>
> (a) the council, may with the sanction of the Government, exempt any local area, from the whole or a portion of such tax on the found that such area is not deriving any or the full benefit from the water-supply and drainage or from the lighting system;
>
> (b) in the case of any land which is not appurtenant to any building or which is occupied by or appurtenant to huts, the commissioner may assess the land or premises, as the case may be, with reference to extent in lies of annual value and at such rates as he may himself determine subject to the maximum of rupees two per three square meters.

46. Thus, Section 118 of the Coimbatore Act has to be read in conjunction with Section 124 of the Coimbatore Act. A reading of the above Section indicates that the rate of property tax has to be fixed by the Council under Section 118 of the Coimbatore Act and while fixing the rates, such rate may be proportionate to the value of each land or building which may advance in systematic progression with the value of the land or building.

47. Proviso (a) to Section 124 of the Coimbatore Act applies to a situation where the council, may, with the sanction of the Government, exempt any local area, from the whole or a portion

of such tax on the ground that such area is not deriving any or the full benefit from the water-supply and drainage or from the lighting system.

48. Thus, for the purpose of Section 124 of the Coimbatore Act, a method has been prescribed for granting a special exemption from whole or part of the property tax on the ground that such portion is not deriving any or the full benefit from the water supply and drainage or from the lighting system. It is for the Municipal Corporation to resolve to exempt the building in any local area from whole or part of the property tax. However, the discretion is vested with the Municipal Corporation.

49. In Corporation of Madras Vs. R.Sundaram and Another, 1971 (2) MLJ 365 : 1970 (2) MLJ 348, it was held as follows:-

> "4. A general survey of these provisions leaves us with the impression that they appear to make no distinction between a tax and a fee. But no argument has been addressed to us as to what precisely is the nature and effect of the water and drainage tax spoken to by proviso (a) to Section 102. But it is clear from Section 98 that the tax levied is property tax and its character remains to be that, whatever be its components. The effect of Section 99 (1) to our minds, is that levy of property tax by the Council is permissible if it comprises of a charge for anyone or more of the three purposes mentioned therein. In quantifying property tax subject to the rate thereof being in accordance with Sub-section (2) of Section 99, the Council, we are inclined to think, may be expected to keep in view the water drainage and lighting system provided and the expenses which would have to be met on account of providing those amenities. But there is no indication in Chapter V of Part III of the Act that property tax, if it includes water, drainage and lighting tax, even where anyone or more of these amenities have not been provided for, is for that reason, and to that extent unauthorised or illegal or invalid. If that were not so there would be no need to provide for an exemption. The exemption in proviso (a) to Section 102 presupposes a levy which is valid, but from which exemption may be granted in particular circumstances. In our

> opinion, proviso (a) to Section 102 should be read and understood in the context of the rest of the provisions in Chapter V of Part III. We are inclined to think, therefore, that merely because property tax is levied inclusive of water and drainage tax, though no facilities have been provided for, it cannot be regarded as illegal and no owner of property can, on that assumption, withhold any part of the tax, as if it were attributable to water and drainage not provided for in the area in which the property is situate. The tax so levied can legitimately be collected and the Council is entitled to do it.
>
> 5. But that does not conclude the matter in favour of the appellant. The Council which is vested with a power under proviso (a) to Section 102 has got a duty to exercise it more especially when the statute conceives it, for the benefit of an area or section of the city. The law requires that the Council in exercise of that power should consider whether, because a particular area is not provided with water and drainage system it should be exempt from water and drainage tax so to speak. If the Council resolves in favour of exemption of the area, it has, before it gives effect to the exemption, to seek and secure the sanction of the State Government.

50. In this case, admittedly, services of water supply, drainage and lighting are provided by SIPCOT itself. These are "services" which would have attracted the service tax under the provision of the Finance Act, 1994. Unless such service is exempted under a special exemption or was in the "negative list" as defined in Section 65B(34) read with Section 66D of the Finance Act, 1994, it would be liable to service tax.

51. After advent of the respective Goods and Service Tax Acts, 2017 (Central and State Goods and Service Tax Acts, 2017), the service provided by the SIPCOT would be liable to GST (both Central and State) unless a special exemption has been provided under the provisions of the aforesaid Act by a Notification.

52. As far as the property tax is concerned, it is a separate levy on the property. The rate of tax and levy of tax are different aspect. The Charging Section for levy of tax is

Section 118 read with Section 121 of the Coimbatore Act as made applicable to the Hosur Act. The rate of tax is determined by the Council in respect of different class of properties as enumerated in Section 117 of the Coimbatore Act.

53. As per Sub Section 1 to Section 121 of the Coimbatore Act, the property tax has to be levied on all buildings and lands in the City save those lands and buildings which are exempted by or under the Act or any other law. As per Sub Section 2 to Section 121 of the Coimbatore Act, the property tax has to be levied at the percentage of the annual value of lands or buildings which are occupied by, or adjacent and appurtenant to, buildings or both, as may be fixed by the Council subject to the provisions of Section 118 of the Coimbatore Act.

54. The function of assessing the property tax and determining the annual value is vested with the Commissioner. Thus, the petitioner is liable to pay tax under the provisions of Coimbatore Act as made applicable to the Hosur Act.

55. The question of grant of the special exemption under the proviso (a) to Section 124 of the Coimbatore Act as made applicable to the Hosur Act will arise only where the Council with the sanction of the Government, decides to exempt any local area from the whole or a portion of such tax on the ground that such area is not deriving any or the full benefit from the water supply and drainage or from the lighting system. It is a discretion to be exercised by the Council.

56. Exemptions are normally granted in public interest. The petitioner has not shown any public interest for granting of the special exemptions barring the circumstances specified therein. That apart, the discretion whether to wholly or partly exempt a land or building, is vested with the Council with the sanction of the Government and it is not for an individual to claim exemption as a matter of right.

57. In the other local areas, services of water supply, drainage and lighting system are provided by the local and municipal bodies. These services are provided by such statutory authorities. They do not automatically attract the exemptions from property tax.

58. In The Theosophical Society Vs. The Chennai Metropolitan Water Supply and Sewerage Board and others, in W.P.Nos.4744 to 4753 of 2009, vide order dated 26.02.2020, it was held that “The respondent Board has no power grant complete exemption by itself. The Respondent Board can grant such exemption only with sanction of the Government. Therefore, it is open to the petitioner to apply to the Government for waiver of such taxes.

If such sanction is granted by the Government, the petitioner will be entitled for such exemption".

59. In view of the above, I do not find any merits in the present Writ Petition. This Writ Petition is liable to be dismissed and is accordingly dismissed. No cost.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Municipal Administration and Water Supply Department,
State of Tamil Nadu,
Secretariat, Chennai - 600 009.

2. The Commissioner,
Hosur City Municipal Corporation,
Bagalur Road, Opposite to Thillai Nagar,
Hosur - 635 109.

3. The District Collector,
Krishnagiri,
Collectorate, Krishnagiri,
Tamil Nadu - 635 001.

4. The Managing Director,
State Industries Promotion Corporation of Tamil Nadu,
19-A, Rukumani Lakshmipathy Road,
Post Box No.7233, Egmore,
Chennai - 600 008.

+1cc to Mr.Leela & Co, Advocate, S.R.No.15314
+1cc to the Government Pleader, S.R.No.15021

W.P.No.23975 of 2021

GSM(CO)
PM/21/03/2022