BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.2217 of 2022
and
W.M.P.(MD) No.1930 of 2022

James Prem Kumar ... Petitioner

/vs./

1.The Additional Chief Secretary,
Rural Development and Panchayat Raj Department,
Secretariat, Fort St.George, Chennai 600 009.

2.The Director,
Rural Development and Panchayat Raj Department,
Panagal Building, Saidapet,
Chennai 600015.

3.The Assistant Director,
Panchayats, Collectorate,
Nagercoil,
Kanyakumari District.

4.The Block Development Officer,
Thovalai Village Panchayat,
Boothapandi 629 852,
Kanyakumari District.

5.The Panchayat President,
Esanthimangalam Village Panchayat,
Esanthimangalam Post,
Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 22.01.2022 passed by the 5th respondent and quash the same as null and void and direct the respondents to reduce/exempt tax for our vacant buildings bearing Door Nos.7/140, 7/140-A, 7/140-B, 7/140-C, 7/140-D, 7/140-E, 7/140-F, 7/140-G, 7/140-1, 7/140B1, 7/140A1, 7/140F1, 7/140H, 7/140J, 7/140G1, 7/140-I, 7/140-H1 of Esanthimangalam Panchayat.

For Petitioner	:	Mr.C.Robert Bruce
For R1 to R4	:	Mr.M.Prakash Additional Government Pleader
For R5	:	Mr.G.Vairam Santhosh Additional Government Pleader

ORDER

The petitioner has challenged the impugned demand notice dated 22.01.2022 issued by the 5th respondent demanding an amount of Rs.10,33,412/- as tax due from the petitioner for a period between 2019, 2020 and 2021-2022. At the time of admission of this Court, an interim order was passed on 10.02.2022 by directing the petitioner to pay 1/4th of the amount.

2.It is the specific case of the petitioner that the petitioner is entitled for exemption, in terms of Rule 19 of the Tamil Nadu Village Panchayat (Assessment and Collection of taxes) Rules, 1999 *(herein after referred to as Rules)*. It is further submitted that though the petitioner was running a college in the said premises, the petitioner had closed down the college for want of students and therefore the petitioner has been unable to generate revenue to discharge the house tax under the provisions of the Tamil Nadu Panchayat Act, 1994. It is submitted that after the outbreak of COVID-19 pandemic, the premises was used by the Government under Section 172 of the Tamil Nadu Panchayat Act, 1994 and Rule 19 of the Rules for treating the COVID-19 patients as a temporary hospital/clinic. It is therefore submitted that it is a fit case for granting exemption in terms of Rule 19 of the aforesaid Rules.

3.The petitioner had earlier filed W.P(MD)No.5733 of 2020, whereby the petitioner had challenged the impugned order of the 4th respondent namely, the Block Development Officer in Na.Ka.No.A8/251/2019, dated 10.02.2020 and the impugned order of the 5th respondent in Na.Ka.No.A8/251/2019, dated 13.03.2020, demanding the amount of Rs.3,94,471/- property tax due from the petitioner under the provisions of Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999. The writ petition was dismissed with the following observation, dated 05.01.2021.

> *"2. The petitioner challenges the levy of property tax on the petitioner institution. According to the petitioner, it is an educational institution run on charitable basis and that therefore, they have to be exempted. But then, the statute itself has been amended*

and the educational institutions have also been brought within the net. Therefore, this Court cannot grant any relief.

3. It is of course open to the petitioner herein to move the appropriate authorities for grant of exemption or any other appropriate relief. With this liberty to the petitioner to move the Government, this Writ Petition stands dismissed......"

4.The petitioner has now received the impugned demand notice for a sum of Rs.10,33,412/- for the period of 2019, 2020 and 2021-2022. It is the case of the petitioner that during the period after the outbreak of COVID-19 Pandemic, this college has been under the control of the Government for treating the COVID-19 patientS and used as a Covid Center and that petitioner is not generating any income by way of education.

5.Opposing the prayer, the learned counsel for the official respondents submits that the tax is payable under Section 172 of the Tamil Nadu Panchayat Act, 1994 by the petitioner. It is submitted that the remission upon the vacancy will arise only if appropriate documents are filed.

6.The learned counsel for the official respondents submits that the 3rd respondent/Assistant Director Panchayats has also sent a representation and has also asked the 4th respondent to enquire and report the same. Pending such enquiry by the 3rd and 4th respondents, the impugned demand of Rs.10,33,412/- is cannot be interefered. It is therefore submitted that the writ petition is devoid of merits as the petitioner is required to pay tax under the provisions of the Tamil Nadu Panchayat Act, 1994 read with Tamil Nadu Panchayat (Assessment and Collection of Taxes) Rules, 1999.

7.It is further submitted that if the petitioner seeks remission of the tax in terms of Rule 19 of the aforesaid Rules, the petitioner is required to follow the procedure prescribed therein and since the petitioner has not complied with for vacancy remission in terms of Rule 19 of the aforesaid Rules, the writ petition filed by the petitioner is devoid of merits.

8.It is brought to the notice of this Court that the house is defined under Section 2 (14) of the Tamil Nadu Panchayat Act, 1994, which reads as follows:

"House means a building fit for human occupation, whether as a residence or otherwise, having a separate principal entrance from the common way and includes any shop, workshop or warehouse or any building used for garaging or parking buses or as a bus stand."

9.Therefore, the petitioner is liable to pay the tax on the college building in terms of Section 172 of the Tamil Nadu Panchayat Act, 1994 which reads as under:

*172. **House-tax** (1) The house-tax shall be levied on all houses in every panchayat village on the basis on which such tax was levied in the local area concerned immediately before the commencement of this Act or on the basis of classified plinth area at the rates specified in Schedule I, as the village panchayat may adopt subject to the provisions of sub-section (3).*

(2) The house-tax shall, subject to the prior payment of the land revenue, if any, due to the Government in respect of the site of the house, be a first charge upon the house and upon the movable property, if any, found within or upon the same and belonging to the person liable to such tax.

(3) The Government shall, by notification, determine in regard to any panchayat village or any class of panchayat villages whether the house-tax shall be levied every half year or year and in so doing have regard to the following matters, namely:

(a) the classification of the local areas under section 4;

(b) the annual receipts of the village panchayat;

(c) the population of the panchayat village and the predominant occupation of such population; and

(d) such other matters as may be prescribed.

(4) The Government may make rules providing for-

(a) the persons who shall be liable to pay the tax and the giving of notices of transfer of houses; ;

(b) the grant of vacancy and other remissions;

(c) the circumstances in which, and the conditions subject to which, houses constructed, reconstructed or demolished, or situated in areas included in, or excluded from the panchayat village during any half-year or year, shall be liable or cease to be liable to the whole or any portion of the tax.

5) If the occupier of a house pays the house-tax on behalf of the owner thereof, such occupier shall be entitled to recover the same from the owner and may deduct *the same from the rent then or thereafter due by him to the owner.*

10.Section 171 of the Tamil Nadu Panchayat Act, 1994 empowers the village panchayat to levy house tax as under:

*171.**Taxes leviable by Village Panchayat-** (1) Every Village Panchayat shall levy in the panchayat village a house Tax*

(2) A duty shall also be levied in every panchayat village on cerain transfers of property in accordance with the provisions of Section 175.

(3) Subject to such rules as may be prescribed and with the sanction of the Inspector and subject to such restrictions and conditions, if any, as amy be imposed by him either at the time of granting sanction or later, the village panchayat may also levy in the village, a tax on agricultural land for a specific purpose.

11.The power to grant exemption under Section 176 of the Tamil Nadu Panchayat Act, 1994 which reads as under:

176.Exemption- No exemption from the payment of any surcharge or tax specifired in Section 171 shall be granted by the Village Panchayat except in accordance with such rules as may be prescribed.

Provided that, in any particular case, such exemption may be granted with the previsous sanction of the Government.

12.I have considered the arguments advanced by the learned counsel for the petitioner, learned Additional Government Pleader for the respondents 1 to 4.

13.The respondents are collecting house tax from the petitioner under the provisions of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999. The aforesaid Rule has been framed in the exercise of power conferred under Section 171, 172, 174, 176 and sub-Section 1 of Section 242 of the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Panchayats Act 21 of 1994).

14.Chapter IX of the Tamil Nadu Panchayats Act, 1994 deals with Taxation and Finance. Under Section 171 of the Tamil Nadu Panchayats Act, 1994, tax is leviable by the Village Panchayat. As per the aforesaid Section, every Village Panchayat shall levy in the Panchayat Village a house tax. As per Section 172 of the Tamil Nadu Panchayats Act, 1994, the house tax shall be levied on all houses in every Panchayat Village on the basis on which such tax will be levied in the local area concerned immediately before the commencement of the Act or on the basis of classified plinth area at the rates specified in the I Schedule as the Village Panchayat may adopt subject to provisions of sub-Clause (3). The rate has been prescribed in the I schedule to the Tamil Nadu Panchayats Act, 1994.

15.Explanation the proviso in the I schedule to Tamil Nadu Panchayats Act, 1994 also makes it clear that in respect of the building used partly as residential and partly as commercial, industrial etc., purposes, the rate of surcharge applicable to the respective category as above shall be applicable for the portions covered by each kind.

16.The second proviso further states that the educational institutions (not commercial in nature) is exempted from levy of house tax immediately before the commencement of the Act and shall continue to be exempted under the said Act. However, the aforesaid exemption to the educational institutions has been amended by an amendment to Rule 15 (C) of the aforesaid Rules.

17.Be that as it may, the tax, which was levied on the petitioner college was also house tax within the meaning of the provisions of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules, 1999. The petitioner is entitled for remission from tax in terms of Rule 19, which deals with vacancy remission. Rule 19 of the Tamil Nadu Village Panchayat (Assessment and Collection of taxes) Rules, 1999 reads as under:-

"***19. Vacancy remission.*** -

(1) When any house or a portion of a house has been vacant for ninety or more consecutive days in a half-year or one hundred and eighty or more consecutive days in a year, the executive authority shall, on demand by the assessee, remit so much, not exceeding two-thirds of the amount of the tax, as is proportionate to the number of days during which the house was vacant in the half-year or year.

(2) Every demand for remission under sub-rule (1) shall be made during the half-year or year in respect of which the remission is sought or in the following half-year or year and not afterwards.

(3).(a) No demand for such remission shall be entertained unless the owner of the house or his agent has previously given notice to the executive authority, the house is vacant and the period in respect of which the remission is made shall be calculated from the date of delivery of such notice.

(b) Every such notice shall expire in a half-year or year during which it is so delivered and shall take no effect thereafter."

18.It is the further case of the petitioner that prior to filing of the present writ petition, the petitioner has already paid a sum of Rs.1,50,000/- and has further deposited a sum of Rs.2,50,000/- pursuant to the order of this Court dated 03.02.2022.

19.Considering the same, I am inclined to quash the impugned order of the 5th respondent dated 22.01.2022 and remit the case back to the 5th respondent to pass a speaking order by giving appropriate remission in terms of Rule 19 of the Tamil Nadu Village Panchayat (Assessment and Collection of taxes) Rules, 1999. This exercise shall be carried out by the 5th respondent within a period of 45 days from the date of receipt of a copy of this order. It is needless to state that the petitioner shall also be heard before passing such orders. In case the amount paid by the petitioner is in excess, the excess amount shall be refunded to the petitioner. On the other hand, in case the petitioner is liable to still pay any other additional amount, such amount may be demanded after giving remission to the petitioner in terms of Rule 19 of the Tamil Nadu Village Panchayat (Assessment and Collection of taxes) Rules, 1999.

20.The writ petition stands allowed, in terms of the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1.The Additional Chief Secretary,
Rural Development and Panchayat
Raj Department,
Secretariat, Fort St.George, Chennai 600 009.

2.The Director,
Rural Development and Panchayat
Raj Department,
Panagal Building, Saidapet,
Chennai 600015.

3.The Assistant Director,
Panchayats, Collectorate,
Nagercoil,
Kanyakumari District.

4.The Block Development Officer,
Thovalai Village Panchayat,
Boothapandi 629 852,
Kanyakumari District.

5.The Panchayat President,
Esanthimangalam Village Panchayat,
Esanthimangalam Post,
Kanyakumari District.

+1 CC to M/s.F.DEEPAK, Advocate (SR-16262[F] dated 04/04/2022)

+1 CC to M/s.SPL GP (SR-16363[F] dated 04/04/2022)

W.P.(MD) No.2217 of 2022
01.04.2022

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