IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14048 of 2013

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1. Patna Notre Dame Sister's Society through its President, Sr. Mary Beena S.N.D., daughter of Late Thomas George, resident of Notre Dame Convent, Patliputra, P.S. Patliputra, District Patna
2. Patna Notre Dame Sisters Society At Jamalpur, through the Superior of Notre Dame Sisters at Jamalpur, Sr. Mary Madhu S.N.D., d/o late Ulahannan Thazhappillil Resident of Notre Dame Convent, Jamalpur, Albert Road, Jamalpur, P.S. Jamalpur, District Munger

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Government of Bihar, Patna.
2. Jamalpur Municipality, Jamalpur through the Executive Officer, Jamalpur Municipality, Jamalpur , Munger.
3. Executive Officer, Jamalpur Municipality, Jamalpur

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.K.M.Joseph, Advocate.
		Ms. Upasana Vibha Toppo, Advocate.
For the Respondent/s	:	Mr.Kinkar Kumar, SC-9.
		Mr. Yogesh Kumar, AC to SC-9.
For Jamalpur Nagar Parishad:		Mr. Rakesh Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 28-11-2023

Heard Mr. K. M. Joseph, learned counsel assisted by Ms. Upasana Vibha Toppo, learned counsel appearing on behalf of the petitioners; Mr. Kinkar Kumar, learned counsel assisted by Mr. Yogesh Kumar, learned AC to SC-9 for the State and Mr. Rakesh Kumar Sinha, learned counsel for the Nagar Parishad, Jamalpur.

2. The petitioner has filed the writ petition for the following reliefs:

> i. That a writ in the nature of Certiorari or any other appropriate writ order or direction be issued quashing Notices of demand dated 10.06.2013 issued by Executive Officer. Jamalpur Municipality, Respondent No. 3 herein to the Charitable and Religious Institutions of the Petitioner Patna Notre Dame Sisters Society at Jamalpur established by the Society in its holding

situated at Albert Road, in Jamalpur Town in Monger District as ultra vires and without sanction of law as the entire holding of the Patna Notre Dame Sisters Society at Jamalpur stand exempted from assessment to tax on holding by order of the State Government passed under section 84 (3) of the Bihar and Orissa Municipal Act. Vide letter No. 2751 dated 15th Feb 1956 issued by Chairman, Jamalpur Municipality Annexure-5.), The exemption from tax on holding granted by the State Government to the entire holding of Patna Notre Dame Sisters Society at Jamalpur w.e.f. 01.04.1956 by letter No. M/TI-1071-55/1214 L.S.G. dated 28.12.1956 has not been cancelled or withdrawn by the State Government till date.

ii. That during the pendency of this application, the operation of the impugned bills dated 10.06.2013 issued under Section 123 of the Bihar and Orrisa Municipal Act 1922 to the petitioner Patna Notre Dame Sisters Society established institutions at its holding at Jamalpur, the bills being issued under the names 'Notre Dame Academy Jamalpur', 'Notre Dame Health Centre Albert Road', and 'Jamalpur Unit Patna Sister' be stayed.

3. Mr. K. M. Joseph, learned counsel appearing on behalf of the petitioner submits that the petitioner is aggrieved by the action of the Executive Officer, Nagar Parishad, Jamalpur who had illegally issued notice of demand in the year 2013 (Annexure-14) and thereafter again on 16.03.2017 (Annexure-17 to the interlocutory application) to be without jurisdiction. It is submitted by learned counsel that before imposing or determining Holding Tax, the Standing Committee of the Jamalpur Nagar Parishad was required to make a recommendation to the State Government for withdrawing the exemption, which was granted to the petitioner by the then Vice Chairman of the Jamalpur Municipal Corporation, long back on 15.02.195 (Annexure-5). He further submits that the State Government vide order dated 28.12.1955 was pleased to exempt the entire holding situated at Jamalpur under Section 84(3) of

the Bihar and Orrisa Municipal Act, 1922. Learned counsel in these background submits that Annexure-14 being *ex-parte* decision of the Nagar Parishad Jamalpur (earlier Jamalpur Municipality) being without jurisdiction is fit to be set aside and quashed.

4. Mr. Kinkar Kumar, learned counsel appearing on behalf of the State submits that no such recommendation is required to be made by the present Executive Officer, Nagar Parishad, Jamalpur or by the then Vice Chairman of the Jamalpur Municipality after coming into force of the New Bihar Municipal Act, 2007. All the decision taken earlier to the present amendment is vitiated as there is no provision regarding exemption of any holding tax and in this regard he has specifically relied upon the statement made in Para-6 of the counter affidavit filed on behalf of the State.

5. Mr. Rakesh Kumar Sinha, learned counsel appearing on behalf of the Jamalpur Nagar Parishad submits that the Executive Officer has passed a detailed order as contained in Annexure-14 and he has not committed any illegality in assessing the holding tax in accordance with the Provisions of the New Bihar Municipal Act, 2007.

6. Heard the parties.

7. The sole question for consideration before this

Court is whether the exemption granted to the Petitioner by the State Government under the repealed Bihar and Orissa Municipal Act, 1922 (now repealed) will automatically become inoperative / withdrawn in view of repeal of the said Act, 1922 in terms of Section 488(1) of the new enactment i.e. the Bihar Municipal Act, 2007?

8. Though it is a well-established proposition in common law that normal effect of repealing a statute or deleting a provision is to obliterate it from the statute- book as completely as if it had never been passed, and the statute must be considered as a law that never existed. However, two exceptions to this common law rule is widely recognized. First is Section 6(1) of the General Clauses Act and the second exception is saving clause in the repealing act itself, if any.

9. As far as exception engrafted in Section 6(1) of the General Clauses Act which, inter alia, provides that repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. However, Section 6 of the the General Clauses Act is only applicable to Central Acts and regulations. Thus, Section 6 of the the General Clauses Act would not come to the aid of the Petitioner as in the present case we are concerned with the

repeal of the Bihar and Orissa Municipal Act, 1922.

10. However, the Bihar Municipal Act, 2007 which has repealed the Bihar and Orissa Municipal act, 1922 does provide for a saving clause in Section 488(4) and (5) which are reproduced hereinbelow for clarity:

REPRODUCTION

Thus, the saving clause in the Bihar Municipal Act, 2007 clearly protect the actions taken / orders issued previously under the repealed Act which inures to the benefit of the Petitioner in the present case. It is admitted position that the exemption provided by the State Government under the repealed Act, 1922 has not been formally modified or withdrawn by the State Government.

11. The question for consideration arises as to whether the exemption granted to the petitioner by the State Government and duly communicated by the Vice Chairman of the then Jamalpur Municipality can be interfered with in light of the provisions of sub clause 4(b), (c) and (e) of Section 488 of the Bihar Municipal Act, 2007 considering the admitted fact that the exemption which was granted to the petitioner by the State Government will automatically will become inoperative / withdrawn by the Municipal Authorities after coming into force

of the Bihar Municipal Act, 2007 automatically?

12. In this regard, the Apex Court in the case of **Gammon India Ltd. Vs. Special Chief Secretary and Others** reported in **(2006) 3 SCC 354** has held that whenever, there is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly unless the re-enacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. The relevant paragraphs are reproduced hereinafter:

> "**72.** In the instant cases, there is a simultaneous repeal and the re-enactment and the A.P. VAT Act clearly saves the earlier provisions in toto. Consequently, rights and liabilities accrued or incurred under the A.P. GST Act shall continue even after it is repealed.
> **73.** On critical analysis and scrutiny of all relevant cases and opinions of learned authors, the conclusion becomes inescapable that whenever there is a repeal of an enactment and simultaneous re-enactment, the re-enactment is to be considered as reaffirmation of the old law and provisions of the repealed Act which are thus re-enacted continue in force uninterruptedly unless the re-enacted enactment manifests an intention incompatible with or contrary to the provisions of the repealed Act. Such incompatibility will have to be ascertained from a consideration of the relevant provisions of the re-enacted enactment and the mere absence of the saving clause is, by itself, not material for consideration of all the relevant provisions of the new enactment. In other words, a clear legislative intention of the re-enacted enactment has to be inferred and gathered whether it intended to preserve all the rights and liabilities of a repealed statute intact or modify or to obliterate them altogether."

13. The Executive Officer, Nagar Parishad, Jamalpur was required to make a recommendation to the State Government for nullifying the order of exemption which was

granted to the petitioner in the year 1955 and without there being any decision of the State Government to withdraw the exemption granted to the petitioner’s organization, the notice contained in Annexure-14 and subsequent to that another similar notice issued on 16.03.2017 as contained in Annexure-17 are hereby set aside and quashed.

14. The Executive Officer, Nagar Parishad, Jamalpur may obtain required order from the State Government to withdraw the benefit of exemption.

15. The Additional Chief Secretary, Urban Development Department, Bihar is directed to pass appropriate order on the basis of records and pleadings made in the present writ petition as well as counter affidavit and call for all the particulars relating to Patna Notre Dame Sister's Society from the concerned Municipal Corporation as well as Jamalpur Nagar Parishad and take a final decision with respect to the exemption matter in accordance with the saving clause of the Act, 2007.

16. The writ petition stands disposed of.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	02.12.2023
Transmission Date	N.A.