IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO. 14491 OF 2018
with
WRIT PETITION NO.14492 OF 2018
with
WRIT PETITION NO.14493 OF 2018

WRIT PETITION NO.14491 OF 2018

Prathamesh Education Society,
A Public Charitable Trust
Registered under the provisions of
Maharashtra Public Trust Act, 1950
Having its Office at : 103, Mahesh Nagar,
Pimpri, Pune – 411 018.
through its Secretary,
Kalpana Mohan Potdar,
Age 63 years, Occ-Secretary,
103, Mahesh Nagar, Pimpri,
Pune – 411 018. ..**PETITIONER**

versus

1. The Pimpri Chinchwad Municipal Corporation,
Through the Municipal Commissioner,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

2. The Municipal Commissioner,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

3. The Administrative Officer (Tax Collection)
Akurdi Divisional Office,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

4. The Additional Commissioner(I)
Pimpri Chinchwad Municipal Corporation,
Municipal Corporation Office,
Main Building, 4th Floor, Pimpri,
Pune-411 018 **..RESPONDENTS**

with
WRIT PETITION NO.14492 OF 2018

Vikas Shikshan Mandal,
A Public Charitable Trust,
Registered under the provisions of
Maharashtra Public Trust Act, 1950
Having its Office at-134, C-Block, MIDC,
Morwadi Road, Chinchwad Station,
Pune-411019
through its Trustee
Vijay Ramchandra Jadhav.
Age 41 years, Occ. Director and Trustee,
Office at-134, C-Block, MIDC,
Morwadi Road, Chinchwad Station,
Pune-411019
..... **PETITIONER**

versus

1. The Pimpri Chinchwad Municipal Corporation,
through the Municipal Commissioner,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

2. The Municipal Commissioner,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

3. The Administrative Officer (Tax Collection)
Akurdi Divisional Office,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

4. The Additional Commissioner(I)
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018 **..RESPONDENTS**

with

WRIT PETITION NO.14493 OF 2018

Abhishek Vidyalayam
A Public Charitable Trust,
Registered under the provisions of
Maharashtra Public Trust Act, 1950
Having its Office at-Plot No.GP-128,
G-Block, MIDC, Shahunagar,
Chinchwad, Pune-411 019
through its Chairman,
Gururaj Rachayya Charantimath,
Age 49 years, Occ. Chairman,
Plot No.GP-128, G-Block, MIDC,
Shahunagar, Chinchwad, Pune-411 019 **..PETITIONER**

versus

1. The Pimpri Chinchwad Municipal Corporation,
through the Municipal Commissioner,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

2. The Municipal Commissioner,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

3. The Administrative Officer (Tax Collection)
Akurdi Divisional Office,
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018

4. The Additional Commissioner(I)
Pimpri Chinchwad Municipal Corporation,
Main Building, 4th Floor, Pimpri,
Pune-411 018 **..RESPONDENTS**

Shri Sandeep M. Phatak, Advocate for the petitioner in all writ petitions.
Shri Rohit P. Sakhadeo, Advocate for the respondent Nos. 1 to 4-Corporation in all writ petitions.

CORAM :- A.S.CHANDURKAR AND M. W. CHANDWANI, JJ.
ARGUMENTS WERE HEARD ON : 17th FEBRUARY, 2023.
JUDGMENT IS PRONOUNCED ON : 10th APRIL, 2023

JUDGMENT (Per A.S.CHANDURKAR, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The challenge raised in these writ petitions is to the adjudication by the Additional Commissioner, Pimpri Chinchwad Municipal Corporation (for short, the Corporation) in the matter of grant of exemption to pay general tax under Section 132(1)(b) of the Maharashtra Municipal Corporation Act, 1949 (for short, the Act of 1949).

3. The facts relevant for adjudication of these writ petitions are as under:

a) As regards Writ Petition No.14491 of 2018:

The petitioner-Trust is running Prathmesh Prathmik Shala which is situated on a plot owned by the Maharashtra Industrial Development Corporation. There is a playground adjoining the school and it is the case of the Trust that the school building as well as the playground are solely used for the public charitable purpose of education. A demand of property tax for the year 2016-17 was made by the Corporation demanding property tax alongwith general tax. The Trust sought a declaration that it was exempted from payment of general tax in the light of public charitable activities undertaken by it. It therefore filed Writ Petition No.5685 of 2017 in that regard. The Division Bench on 26.04.2018 permitted the Trust to make a representation to the Corporation and seek exemption under Section 132(1)(b) of the Act of 1949. The Additional Commissioner of the Corporation was directed to consider the representation and pass a reasoned order thereon. The Trust accordingly made such representation on 31.05.2018. The Additional Commissioner on 21.06.2018 considered the representation and after hearing the Trust through its representative held that the demand for property tax including general tax was legal and valid as the Trust was not entitled to be granted any exemption from payment of general tax under Section 132(1)(b) of the Act of 1949. In view of this adjudication, Writ Petition No.5685 of 2017 was disposed of on 07.12.2018 by granting liberty to the Trust to challenge the aforesaid adjudication in accordance with law. It is thereafter that this writ petition has been filed raising a challenge to the order dated 21.06.2018 as well as the subsequent demand notices issued by the Corporation on 04.10.2018. The Trust seeks a declaration that it is entitled to exemption under Section 132(1)(b) of the Act of 1949.

(b) As regards Writ Petition No.14492/2018:

The petitioner herein is a public charitable Trust registered under the provisions of the Maharashtra Public Trusts Act, 1950 (for short, the Act of 1950).

The Trust is running various schools of which Smt. Chandrakala Kishorilal Goel Prarthmik Vidya Mandir is a fully aided primary school. The Trust seeks exemption from payment of general tax under Section 132(1)(b) of the Act of 1949 by urging that its activities in that regard are for a public charitable purpose and it is not liable to pay general tax. The Trust was issued a demand notice by the Corporation towards property tax for the year 2017-18. The Trust sought a declaration that it was exempted from payment of general tax in the light of public charitable activities undertaken by it. It therefore filed Writ Petition No.5687 of 2017 in that regard. The Division Bench on 26.04.2018 permitted the Trust to make a representation to the Corporation and seek exemption under Section 132(1)(b) of the Act of 1949. The Additional Commissioner of the Corporation was directed to consider the representation and pass a reasoned order thereon. The Trust accordingly made such representation on 31.05.2018. The Additional Commissioner on 21.06.2018 considered the representation and after hearing the Trust through its representative held that the demand for property tax including general tax was legal and valid as the Trust was not entitled to be granted any exemption from payment of general tax under Section 132(1)(b) of the Act of 1949. In view of this adjudication, Writ Petition No.5687 of 2017 was disposed of on 07.12.2018 by granting liberty to the Trust to challenge the aforesaid adjudication in accordance with law. It is thereafter that this writ petition has been filed raising a challenge to the order dated 21.06.2018 as well as the subsequent demand notices issued by the Corporation on 04.10.2018. The Trust seeks a declaration that it is entitled to exemption under Section 132(1)(b) of the Act of

1949.

c) As regards Writ Petition No.14493 of 2018:

The petitioner-Trust runs Abhishekh Vidyalayam, an unaided school. The Trust claims that it is running the school on no profit no loss basis. The Trust has two school buildings. In one building pre-primary, primary and secondary school is being conducted while in the other building junior college is being conducted. There is a playground admeasuring 2299 square meters and the Trust claims that even the playground is used solely for public charitable purpose. A demand for property tax for the year 2017-18 was made by the Corporation demanding property tax alongwith general tax. The Trust sought a declaration that it was exempted from payment of general tax in the light of public charitable activities undertaken by it. It therefore filed Writ Petition No.5718 of 2017 in that regard. The Division Bench on 26.04.2018 permitted the Trust to make a representation to the Corporation and seek exemption under Section 132(1)(b) of the Act of 1949. The Additional Commissioner of the Corporation was directed to consider the representation and pass a reasoned order thereon. The Trust accordingly made such representation on 31.05.2018. The Additional Commissioner on 21.06.2018 considered the representation and after hearing the Trust through its representative held that the demand for property tax including general tax was legal and valid as the Trust was not entitled to be granted any exemption from payment of general tax under Section 132(1)(b) of the Act of 1949. In view of this adjudication, Writ Petition No.5718 of 2017 was disposed of on 07.12.2018 by granting liberty to the Trust to challenge the aforesaid adjudication in accordance with law. It is thereafter that this writ petition has been filed raising a challenge to the order dated 21.06.2018 as well as the demand notices issued by the Corporation on 04.03.2018. The Trust seeks a declaration that it is entitled to exemption under Section 132(1)(b) of the Act of 1949.

4. Shri Sandeep M. Phatak, learned counsel for the petitioners-Trusts submitted that the impugned adjudication by the Additional Commissioner was without considering all relevant documents and without examining the case made out by each Trust for seeking such exemption from payment of general tax. The documents placed before the Additional Commissioner clearly indicated the nature of activities undertaken at the respective schools. Assuming that the entire building was not entitled for exemption from payment of general tax, it was necessary for the Additional Commissioner to have examined as to whether a portion of such premises could be granted such exemption. Merely by observing that the schools were receiving grants and that they were collecting fees would not be sufficient to deny such exemption. It was clear that the Trust had been denied exemption on untenable grounds and on a proper consideration of the documents on record, it was clear that the Trust was entitled for exemption from payment of general tax under Section 132(1)(b) of the Act of 1949. On these counts, it was submitted that the impugned orders passed by the Additional Commissioner could be examined.

5. Shri Rohit P. Sakhadeo, learned counsel for the respondents-Corporation at the outset raised a preliminary objection to the maintainability of the writ petitions on the ground that an alternate efficacious remedy under Section 406 of

the Act of 1949 was available to the petitioners. Since each Trust had sought to challenge the issuance of demand notice, it could be directed to avail the statutory remedy provided under the Act of 1949. It was urged that there was no reason to by-pass the said statutory remedy. It was also submitted that while invoking such statutory remedy, the Trust could seek exemption under Section 132(1)(b) of the Act of 1949. Further while raising challenge to the demand notice, it was necessary for the Trust to deposit the amount in question which was a pre-requisite for invoking such statutory remedy. There was no case made out to permit the Trust to by-pass the said remedy and invoke writ jurisdiction of the Court to challenge the demand notice. In that regard, the learned counsel for the Corporation referred to the order passed in **Writ Petition No.1650 of 2014** (*Viom Infra Networks Maharashtra Ltd. & anr. Vs Navi Mumbai Municipal Corporation and ors.*) dated 20.01.2015 and the judgment of learned Single Judge at the Nagpur Bench in **Appeal against Order No.34 of 2017** (*Akola Municipal Corporation vs. Shri Akola Gujrati Samaj*) decided on 14.02.2018.

Without prejudice to the aforesaid, it was submitted that the Additional Commissioner had considered all documents placed before him by each Trust in support of its claim that it was exempted from payment of general tax. After considering all relevant documents, it was found that the activities of each Trust could not be treated to be public charitable activities so as to enable it to seek exemption from payment of general tax. It was further submitted that merely rendering education by itself was not sufficient to hold that each Trust was entitled for exemption from payment of general tax. The documents relied upon clearly indicated that each Trust was earning profit from its activities and there was no element of public charity therein. Referring to the affidavit in reply placed on record, it was submitted that property tax was the main source of income of the Corporation since it was required to undertake various developmental activities for the citizens as a whole. The scope for interference with the adjudication by the Additional Commissioner was limited and this Court under Article 226 of the Constitution of India would not examine the challenge as an appellate authority. Since the adjudication was undertaken by considering all relevant material placed before the Additional Commissioner, there was no case for interference in writ jurisdiction.

7. In reply, the learned counsel for the petitioner-Trust by inviting attention to the judgment of the Division Bench in **Writ Petition No. 2886 of 2013** (*Sindhu Educational Trust, Pune vs. State of Maharashtra and ors.*) decided on 30.04.2014 submitted that even if part of the building or land is shown to be used for public charitable purpose, it would be deemed to be a separate property for the purposes of taxation. It was submitted that in this very decision the Division Bench had held that an order passed by the Assistant Commissioner of the present nature cannot be subjected to a challenge under Section 406 of the Act of 1949. For this reason, it could not be said that an alternate remedy was available to the Trust. The writ jurisdiction of this Court had been rightly invoked for seeking the reliefs as prayed for. Reference was also made to the decision in **Writ Petition No.927 of 2018** (*Shahbabu Education Society, Patur, Dist. Akola vs. State of Maharashtra and anr.*)

decided on 16.08.2019 at the Nagpur Bench.

8. We have heard the learned counsel for the parties and we have perused the documents on record. Since a preliminary objection has been raised to the maintainability of the writ petitions on the ground that an efficacious alternate remedy under Section 406 of the Act of 1949 is available to the Trust, it would be necessary to consider said aspect first.

It is the case of each Trust that it is entitled to exemption from payment of general tax under Section 132(1)(b) of the Act of 1949. For that purpose, it had challenged the demand notices issued to it. In the earlier round of litigation this Court had directed the Additional Commissioner to consider the representations that were to be made by each Trust seeking such exemption. Pursuant thereto, the Additional Commissioner has considered all those representations and has thereafter concluded that the Trust is not entitled to grant of such exemption from payment of general tax. This adjudication coupled with the subsequent demand notices that have been issued pursuant to such adjudication are now under challenge. The question whether the adjudication undertaken by the Additional Commissioner while determining the request made by the Trust for grant of exemption could be subjected to challenge under Section 406 of the Act of 1949 was considered by the Division Bench in *Sindhu Educational Trust* (supra). The facts therein indicate that the notice of demand was challenged on the ground that the Trust therein sought exemption from payment of general tax. While granting *Rule* this Court had directed the Assistant Commissioner to consider the application for grant of exemption from payment of general tax. The Assistant Commissioner rejected the application as made and that order was also challenged in the aforesaid writ petition. In that context, the Division Bench in paragraph 23 of its judgment observed as under:

> "23. *As there is an order dated 4th December 2013 passed by the Assistant Commissioner which cannot be subjected to a challenge under Section 406 of the said Act of 1949, we are considering the legality and validity of the said order."*

From the aforesaid observations it is clear that an order passed by the Assistant Commissioner considering the prayer for grant of exemption from payment of general tax cannot be subjected to a challenge under Section 406 of the Act of 1949. We find that the Trusts herein are placed in a similar situation that was considered by the Division Bench in *Sindhu Educational Trust* (supra). For this reason, we cannot uphold the preliminary objection raised by the Corporation to the maintainability of the writ petitions since the order passed by the Additional Commissioner in the present writ petitions refusing to grant exemption to the Trust is under challenge. Since the challenge to that adjudication cannot be entertained under Section 406 of the Act of 1949, we have proceeded to examine the challenge to such adjudication on merits.

9. The Division Bench in *Sindhu Educational Trust* (supra) has considered the provisions of Section 132 of the Act of 1949 in detail. It has referred to various earlier decisions of this Court and has also considered the provisions of the Delhi Municipal Corporation Act, 1957 in that regard. In paragraphs 18 to 21 of the aforesaid decision, it has been observed as under:

"18. *However, in the said Act of 1949 and in particular Section 132 thereof, there is no requirement incorporated that to enable a Trust to claim exemption, it must be supported wholly or in part by the voluntary contributions and that it applies its profit or other income in promoting its objections.*

19. In the case of Sant Kanwarram Education and Welfare Society and others, the learned Single Judge held that the education per se is a charitable purpose. However, what binds this Court is the law laid down by the Apex Court in the case of P. C.Raja Ratnam Institution wherein it was held that merely because education is imparted in the building, that by itself cannot be regarded as a charitable object. The collection of fees from the students enrolled in the school is not sufficient to come to a conclusion that the building in which the school is run is not used for the public charitable purposes. If a school which is not receiving any grant or which is an unaided school collects reasonable amount by way of fees from the students without collecting any donation or any other amount only for the purposes of meeting the expenditure of running the school, the collection of fees would not be a ground to deny the exemption under Section 132 of the said Act of 1949. In a given case, a school may be collecting an amount by way of fees which is more than what is necessary to meet the expenditure for running the school. If such excess amount is used solely for charitable objects, still benefit of exemption will be available.

20. A Trust which is an owner or a holder of a building where a school is being run as a charitable activity may be conducting several other activities on the other properties. Some of other educational institution run by the Trust may have an object of earning profit. The Trust may have income from some other properties. The Trust may be receiving donations for its other activities. That is no ground to deny benefits under Section 132 of the said Act of 1949 to the school building. To summarize, whether the exemption can be granted in respect of the building or land under Section 132 of the said Act of 1949 will depend on the facts and circumstances of each case. Several factors will have to be taken into consideration. The

> *use of a land or building per se does not amount to use of the land or building for a public charitable purpose. Under Section 132 of the said Act of 1949, an exemption can be granted only to that portion of the land or building which is exclusively used for the public charitable purpose. Even if a part of the building or land is being used for a public charitable purpose, by virtue of sub-section (3) of Section 132 of the said Act of 1949, it shall be deemed to be a separate property for the purposes of taxation.*
>
> *21. In a given case, if a building or a land or a part thereof may have been granted exemption for a particular accounting year. However, the tax is payable yearly. Therefore, the case for grant of exemption will have to be considered by the Municipal Corporation every year."....*

We are in complete agreement with what has been stated hereinabove and hence it is not necessary to re-examine the provisions of Section 132 of the Act of 1949 afresh. The impugned orders passed by the Additional Commissioner can be examined in this context.

10. (a) As regards Writ Petition No.14491 of 2018:

The order passed by the Additional Commissioner on 21.06.2018 records that the school receives 100% grant and that fees were being charged from students of Class IX and X. This indicated that the students were not being provided with free education. In the premises of the school building the President of the Trust was residing in the portion admeasuring 2016 square feet. Mere fact that the Trust was imparting education by itself was not sufficient to hold it entitled to exemption from payment of general tax. The balance-sheets of the year 2014-15 to 2016-17 had not been certified. On these counts, it was held that the Trust was not entitled to grant of exemption from payment of general tax under Section 132(1)(b) of the Act of 1949.

(b) As regards Writ Petition No.14492 of 2018:

The Additional Commissioner in his order dated 21.06.2018 has noticed that for the period from 24.03.2005 to 01.04.2013 the Trust did not seek any exemption from the payment of general tax. On the contrary, for the financial year 2016-17 it had paid an amount of Rs.Five lakhs towards property tax. It then holds that the school charges fees from the students and also receives grant from the State Government. Rendering of education by itself cannot be treated as a public charitable activity. The school also utilizes the playground available in the M.I.D.C. area. The Trust did not place on record the number of students who were provided with free education or the number of students who were exempted from payment of fees. The balance-sheets placed on record did not indicate that the activities of the Trust were in the nature of public charitable activities. For these reasons it was concluded that the Trust was not entitled for exemption from payment of general tax under Section 132(1)(b) of the Act of 1949.

(c) As regards Writ Petition No. 14493 of 2018:

The order dated 21.06.2018 passed by the Additional Commissioner indicates that though the school was not receiving grant-in-aid, fees were being charged from the students as per provisions of the Maharashtra Educational Institution (Fee Regulations) Act, 2011. There were two buildings standing on Plot No. 128 alongwith a playground. The Additional Commissioner noted that the Trust was earning profit by imparting education. There was no material to hold that free education was being provided to any student. Imparting education by itself would not mean that a public charitable activity was being undertaken. No details of providing free education to any student was placed on record. The balance-sheets for the last five years being the period from 2013-14 to 2017-18 indicated surplus funds and the fact that the Trust was earning profit. It was thus clear that the fees received from the students were being utilized by the Trust for itself. The Trust also had fixed deposit to the tune of Rs.16,41,748/-. On these counts, it was held that the Trust was not entitled to grant of any exemption from payment of general tax under Section 132(1)(b) of the Act of 1949.

11. We find that the aforesaid adjudication by the Additional Commissioner fails to take into consideration the relevant aspects that have been highlighted by the Division Bench in *Sindhu Educational Trust* (supra). The collection of fees from the students has been given much importance by the Additional Commissioner while considering the request for exemption. This Court has held in the aforesaid decision that collection of fees from the students by itself is not sufficient to come to a conclusion that building in which the school is running is not being used for public charitable purposes. It has been observed that if a school is not receiving any grant but collects reasonable amount of fees from students without collecting any donation or any other amount only for the purposes of meeting the expenditure of running the school, the collection of fees cannot be a ground to deny such exemption. A Trust having income from other property and receiving donations for its other activities also cannot be a ground to deny the benefit under Section 132 of the Act of 1949. Even if part of the building or land is utilized for a

public charitable purpose, that portion can be deemed to be a separate property for the purposes of taxation. Moreover, the case for grant of exemption is required to be considered every year. Such exemption could be for a particular financial year. Even the aspect of having large fixed deposits has been considered and it has been observed that if such deposits are created by using the income earned from the land or building with regard to which exemption is sought, same will have to be denied.

We find that the impugned adjudication by the Additional Commissioner is in general terms without specifically dealing with various finer aspects that have been highlighted in *Sindhu Educational Trust* (supra). The fact that the school collects fees has been found to be sufficient to proceed on the basis that no charitable activity is carried out. It would be necessary to examine whether fees received are used only for meeting the expenditure for running the school or it is also earning any profit. The Additional Commissioner has given undue importance to the absence of free education being rendered by the schools to some or all students. This has also been found not to be of much relevance by the Division Bench. We therefore find that the observations of the Division Bench in *Sindhu Educational Trust* (supra) while dealing with a somewhat similar adjudication by the Assistant Commissioner are applicable in the present facts and hence we are inclined to follow the same course as was followed in the aforesaid decision. In other words, a fresh consideration of entire material by the Additional Commissioner is warranted. Same will however have to be done in the light of the judgment in *Sindhu Educational Trust* (supra).

12. For aforesaid reasons, the following order is passed:

(i) The order dated 21.06.2018 passed by the Additional Commissioner in each writ petition is set aside. The Additional Commissioner is directed to re-consider the claim of each petitioner for grant of exemption from payment of general tax afresh in the light of the decision of this Court in *Sindhu Educational Trust* (supra). The petitioner in each writ petition is at liberty to place on record additional documents in support of the claim made by it.

(ii) To enable re-consideration of the matter, the representative of each petitioner shall appear before the Additional Commissioner on 26.04.2023. The representations/applications shall be considered and decided by the Additional Commissioner within a period of two months from the date of appearance mentioned hereinabove.

(iii) Since the impugned demand notices contain a demand for various taxes including general tax, it is directed that each Trust shall pay the amount demanded under the impugned demand notices excluding the amount of general tax, education cess and street tax mentioned therein. The liability to pay general tax would be dependent upon the adjudication by the Additional Commissioner and the same would govern the liability to pay education cess under Section 148 A and street tax under Section 148 C of the Act of 1949. If the Trust is aggrieved by the assessment of other taxes excluding general tax, education cess and street tax, it is free to invoke the statutory remedy provided under Section 406 of the Act of 1949 for challenging the same. For said purpose, the date of this judgment would be treated as the relevant date of issuance of the relevant demand notice. In other words, the date of this judgment would be treated as giving a cause of action to each Trust as accruing consequent upon the issuance of such demand notice. The limitation prescribed under Section 406 of the Act of 1949 would be calculated accordingly.

(iv) It is clarified that this Court has not examined the claim for grant of exemption from payment of general tax on merits and the Additional Commissioner shall consider the matter on its own merits and in accordance with law.

Rule is made partly absolute in aforesaid terms in all writ petitions with no order as to costs.

(M. W. CHANDWANI, J.) **(A.S.CHANDURKAR, J.)**

Andurkar..