IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.11.2023

CORAM:

THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.6815 of 2020

and

W.M.P.Nos.8117 & 8118 of 2020

S.Palaniandi Mudaliar Memorial Hospital
(Established by S.Palaniandi Mudaliar Charitable Trust)
No.29, Cuddalore Road North Extenstion,
Ammapet, Salem – 636 003
Rep by its Trustee. ... Petitioner

-Vs-

1.The Corporation of Salem
Rep by its Commissioner
Salem – 636 001.

2.The Assistant Commissioner
Corporation of Salem
Ammapet Ward Office
Salem – 636 003.

3.State of Tamil Nadu
Represented by Secretary to Government
Municipal Administration and Water Supply Dept
Secretariat, Fort St. George
Chennai – 600 010. ... Respondents

PRAYER :

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the second respondent in proceedings bearing Na.Ka.No.11/2564/2007 dated 24.01.2020 and the consequential prosecution notice dated 04.03.2020 and quash the same and direct the Respondents to refund to the petitioner a sum of Rs.6,27,200/-, being all the property tax paid by the petitioner.

For Petitioner : Mr.R.Parthasarathy, Senior Counsel for Mr.Rahul Balaji.

For Respondents : Mr.Haja Nazirudeen, A.A.G-I for Ms.N.Devi, Standing Counsel for R1 and R2.

Mr.S.Ravi Kumar, Spl.G.P., for R3

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ORDER

This Writ Petition has been filed challenging the proceedings of the second respondent dated 24.01.2020 and the consequential demand notice dated 04.03.2020 and for refund of the sum of Rs.6,27,200/- which has already been paid as property tax.

2.Mr.R.Parthasarathy, learned Senior Counsel representing on behalf of Mr.Rahul Balaji, learned counsel on record for the petitioner would contend that the petitioner is a charitable institution and therefore, they are exempted from payment of property tax. Learned Senior Counsel would submit that in terms of Section 123(e) of The Coimbatore City Municipal Corporation Act, 1981 which is applicable for the Salem Corporation as well, charitable hospitals and dispensaries but not including residential quarters attached thereto shall be exempted from the property tax. Section 123(e) of The Coimbatore City Municipal Corporation Act, 1981 reads as follows:

> ***123. General exemption from property tax.****- The following buildings and lands shall be exempt from the property tax-*
>
> *(a). ....*
> *(b). .....*
> *(c). .....*
> *(d). .....*
>
> *(e). charitable hospitals and dispensaries but not*

including residential quarters attached thereto;

3.In the instant case on hand, the petitioner has been running a charitable hospital created under the Trust Act and they have also obtained tax exemption under Section 12A of the Income Tax Act, 1961. Originally, the Trust was incorporated vide Trust deed dated 24.01.1975 and thereafter, the terms and conditions were modified vide Trust deed dated 21.05.1980. In terms of Clause 3(s) of the Trust deed dated 21.05.1980, it has been decided to utilize the funds for the advancement of any other object to general public utility not involving the carrying on of any activity for profit. The said clause is usefully extracted hereunder:

> "*3(s). To utilise the funds of the Trust for the advancement of any other object to general public utility not involving the carrying on of any activity for profit.*"

4.By referring the aforesaid clause, learned Senior Counsel appearing on behalf of the petitioner would submit that the monies collected from the patient as charges for accommodation etc., are being utilized only for the advancement of the object of the Trust. He would further submit that when the petitioner/Trust had been exempted under Section 12A of the Income Tax Act, 1961 and the petitioner/Trust is not paying any Income Tax as it has been recognized as a charitable Trust by the Income Tax authorities, it is absurd that the local body is denying tax exemption to the petitioner/Trust on the ground that the petitioner is collecting monies from the patients and all the services were not offered free of cost by the hospital authorities.

5.Learned Senior Counsel also drew the attention of this Court to the balance sheet as well and submitted that only the Income and Expenditure statement of the Trust is being filed before the Income Tax authorities. A mere perusal of the same would reveal that the petitioner/Trust has not been paying any Income Tax even as on today.

6.Learned Senior Counsel for the petitioner also drew the attention of this Court to the proceedings dated 23.03.2023 made by another learned Single Judge of this Court which reads as follows:

“There is a factual dispute as to whether special notice dated 09.12.2015 has been served on the petitioner as it is the

petitioner's specific case that it has not. Let the records be produced specifically proof of service of notice dated 09.12.2015 or any other notice for assessment.

2. In addition, petitioner seeks leave to circulate evidences which it states it is in possession of and that are also referred to in representation dated 15.11.2019 to establish that (i) at least a substantial portion of its services are rendered gratis and (ii) that the profits from commercial billing are ploughed back into the hospital.

3. List on 10.04.2023."

Pursuant to the aforesaid order, in order to establish that a substantial portion of its services are rendered gratis and that the profits from commercial billing are ploughed back into the hospital, the petitioner has filed an additional affidavit dated 08.04.2023 stating that the funds collected from the organization have been utilized for the purpose of providing services for advancement of any other object to general public utility for which the Trust was formed.

7.The petitioner has also filed the discharge list whereby it could be seen that the hospital has provided standard deduction to the tune of Rs.3.31 Crore during the assessment year 2021-22 and standard deduction to the tune of Rs.1.63 Crore during the assessment year 2022-23. Further more, it could be seen from the documents placed before this Court that the hospital has also provided concessional treatment to the tune of Rs.18,69,320/- during the assessment year 2020-21, Rs.10,53,523/- during the assessment year 2021-22 and Rs.9,84,174/- during the assessment year 2022-23.

8.Thus by relying on the aforementioned documents placed before this Court, learned Senior Counsel appearing on behalf of the petitioner would submit that the hospital is committed in providing charitable services to its patients and the meagre amount that is being collected from the patients as charges is also being ploughed back into the hospital for betterment of its facilities and the hospital is not functioning with an aim of earning any profit and the trustees are also not gaining any monetary benefits out of the services rendered by the hospital. When that being the case, learned Senior Counsel would submit that though the hospital is exempted from payment of property tax since its establishment in the year 1997 itself, they have been inadvertently paying the property tax until the year 2007.

9.While so, the petitioner came to know about the provision of Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981 which is also applicable to Salem Corporation and therefore made an application for claiming tax exemption by virtue of series of representations dated 27.11.2009, 06.04.2010, 30.12.2010, 20.02.2012, 21.03.2016 and 15.11.2019. However, the second respondent passed an impugned order dated 24.01.2020 wherein without going into all the aspects raised by the petitioner in its numerous representations, the second respondent has merely referred to the judgment made in the case of ***Aravind Eye Hospital*** and has stated that the exemption granted to the Arvind Eye Hospital which is a Super Speciality Hospital cannot be extended to the petitioner hospital as the same comes under the category of Multi Speciality Hospital, even though the petitioner has made an elaborate representation stating as to why they are not liable to pay the property tax and had also narrated the functioning of the petitioner Trust in a detailed manner.

10.To support his contentions learned Senior Counsel relied on the decisions of this Court made in ***Govel Trust running Aravind Eye Hospital v. Govt of Tamil Nadu and others*** reported in ***2009 SCC OnLine Mad 258*** and ***Parivar Seva Sanstha v. The Commissioner, The Corporation of Chennai*** reported in ***MANU/TN/5762/2020*** and prayed for setting aside the impugned order and for refund of the property tax already paid by the petitioner.

11.On the other hand, Mr.Haja Nazirudeen, learned Additional Advocate General assisted by Ms.N.Devi, learned Standing Counsel for Salem Corporation would submit that the petitioner is only offering concessional services and they are not offering treatment totally free of cost and hence the hospital cannot be exempted from payment of property Tax. In case if the hospital is providing treatment to all the patients free of cost, only then it can be considered as a charitable hospital and Section 123(e) of The Coimbatore City Municipal Corporation Act, 1981 will be applicable. However, in the instant case the hospital is making systematic profit and therefore, they are not entitled for exemption as claimed by the petitioner. To support his contention, learned Additional Advocate General relied on the decision of this Court made in ***W.P.No.1639 of 2020***, dated ***14.03.2022***. Emphasis was placed on paragraphs 75 and 76 of the said judgment and the same is usefully extracted hereunder:

> *"75. The facts on record also indicate that the all along the hospital has been receiving charges for the services rendered by it and only a section of the patients were receiving free services. Further, if the constitution of a trust or institution expressly provides that the purpose shall be carried out by engaging in an activity which has a predominant profit motive, there would be no scope for controversy, because the purpose would, on the face of it, involve carrying on of an activity for profit and it would be non~charitable.*
>
> *76. Where a society or body is making systematic profit, even though a portion of the profit is utilised only for charitable purposes, it cannot be said that it could claim exemption. The test according to the Hon-ble Supreme Court is whether the society could survive without receiving voluntary contributions, even though it may have some income by the activities of the society."*

12.In response to the submission made by the learned Additional Advocate General, Mr.R.Parthasarathy, learned Senior Counsel appearing on behalf of the petitioner would contend that the submission made by the learned Additional Advocate General had not been discussed anywhere in the impugned order. When that is the case, the respondent cannot now improve their case during the course of the oral arguments or by way of a counter affidavit. The learned Senior Counsel would further contend that the hospital has not made any systematic profit and the essential costs received from the patients is also ploughed back into the hospital for betterment of its services.

13. Upon hearing the submissions made by learned Senior Counsel for the petitioner and learned Additional Advocate General appearing on behalf of the respondents 2 and 3 and on perusal of the records placed before this Court, the issue to be decided in the present case is as to whether the petitioner is entitled for exemption of property tax as provided under Section 123(e) of The Coimbatore City Municipal Corporation Act, 1981 which is applicable to Salem Corporation as well?

14.No doubt, the petitioner is a charitable trust registered under the Trust Act and the petitioner has got tax exemption under Section 12A of the Income Tax Act, 1961. It is seen from the records placed before this Court that the petitioner has only filed income and expenditure statement before the income tax authorities and they have not filed any profit and loss statement. Further, a perusal of the balance sheet would show that the Trust is having income over expenditure and the said income is also invested back only for the betterment of facilities in the hospital and there is also no evidence to show that the trustees are deriving any monetary benefits from the income generated from the hospital. In view of the aforesaid reasons, the argument made by the learned Additional Advocate General that the hospital is making systematic profits appears to be without any merits.

15.It is also an admitted fact that the hospital is not doing services free of costs to all the patients but they are only providing concessional services. The hospital is also providing standard deduction and additional deduction in the charges for the benefit of the poor and needy patients. Further, it is established that the income derived from the hospital is invested back into the hospital for betterment of its services. As per Clause 3(s) of the Trust deed dated 21.05.1980, it has been decided to utilize the funds for the advancement of any other object to general public utility not involving the carrying on of any activity for profit. Further, it could be seen from the said document that no interest shall be charged as per Clause 3(c) of the objects of the Trust on moneys to be lent to poor and deserving students to meet their educational expenses. Thus, it can be inferred that the petitioner is doing charitable services within the scope of the Trust deed and hence, they are certainly entitled for benefit of exemption from payment of property tax.

16.For all the above reasons, this Court is of the considered view that it is crystal clear that the petitioner is doing charitable service and the revenue generated from the hospital is utilised for betterment of its facilities as per the objects of the Trust, however the respondents without considering all these aspects had consequently made a further demand which is not sustainable in law. Therefore, the impugned order passed by the respondent is liable to be set aside and accordingly set aside.

17.At this juncture, learned Additional Advocate General would submit that the matter may be remitted back to the respondent to pass orders afresh and the petitioner may be directed to place all the relevant records to establish that they are doing charitable services. Though this Court is convinced that the petitioner is doing charitable services, in view of the suggestion putforth by the learned Additional Advocate General which is also conceded by the learned Senior Counsel appearing on behalf of the petitioner, this Court while setting aside the impugned order remits the matter back to the respondent concerned and the respondent is directed to consider the matter afresh on merits in line with the observations made by this Court in this order.

18.This Writ Petition is disposed of with the aforesaid directions. Consequently, connected miscellaneous petitions are closed. No costs.

07.11.2023

(2/2)

Neutral Citation : Yes/No
Internet : Yes/No
Index : Yes/No
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To

1.The Secretary to Government
Municipal Administration and Water Supply Dept
State of Tamil Nadu
Secretariat, Fort St. George
Chennai – 600 010.

<u>KRISHNAN RAMASAMY, J.</u>

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<u>W.P.No.6815 of 2020</u>