IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.10885 of 2020
&
W.M.P.Nos.13209 & 18802 of 2020

Sundaram Medical Foundation
Dr.Rangarajan Memorial Hospital
Shanthi Colony 4th Avenue,
Anna Nagar, Chennai – 600 040.
Represented by its Trustee & Director – Administration
T.N.P.Durai ...Petitioner

Vs.

1.The Additional Chief Secretary &
Commissioner of land Reforms
Ezhilagam, Chepauk,
Chennai – 600 005.

2.Special Tahsildar,
(Urban Land Tax)
Egmore – Nungambakkam Taluk
Spur Tank Road,
Chennai – 600 031.

3.Assistant Commissioner
Office of the Urban Land Tax
409, Periyar E.V.T. Salai,
Amingikarrai, Chennai 600 029. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to Order dated 10.03.2020 bearing Rc.No.6657/2019//B2 passed by the First Respondent and quash the same and consequently forbear the respondents from levying, demanding or enforcing the levy of urban Land Tax in respect of its premises at Sundaram Medical Foundation, Dr.Rangarajan Memorial Hospital, 9-C, Shanthi Colony, 4th Avenue, Anna Nagar, Chennai – 600 040 in light of the exemption under Section 29 of Tamil Nadu Urban Land Tax Act.

For Petitioner :Mr.T.K.Bhaskar

For Respondents :Mr.K.V.Sajeev Kumar
Special Government Pleader

O R D E R

The petitioner is a Public Charitable Trust (henceforth referred to as 'Petitioner' or 'Trust'), constituted under a Deed of Trust dated 29.11.1990. The main objects of the Trust are to establish hospitals, medical research and medical relief centres, nursing homes and dispensaries and such other objects as are set out in the deed of Trust itself. The Trust holds a registration under the provisions of Section 12 A of Income Tax Act, 1961 (IT Act) since 30.11.1990.

2. The petitioner was desirous of setting up a hospital in or around Madras city and had hence applied to the Special Commissioner and Commissioner of Land Reforms, Chepauk, Chennai for allotment of site admeasuring 2452 Sq.Mtrs (Approx. 11 grounds) in Survey No.4/2 Block No.90 of Naduvakkarai Village ('site'/'property'/'property in question'). Admittedly, the site had been acquired by the Government under the provisions of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978.

3. The application/proposal of the petitioner dated 07.01.1991 had come to be accepted by the respondent and the Government had, vide order in G.O.Ms.No.460 dated 10.04.1992, allotted the site to the petitioner conditionally and upon receipt of consideration of Rs.50 Lakhs (approx.). The allotment was itself subject to strict conditions that call for compliance monitoring on a regular basis.

4. The order of allotment including the terms are set out below:-

> *<u>'Order:-</u>*
> *M/s. Sundaram Medical Foundation, Madras has applied for allotment of lands of 2542 sq.mts. in Survey Number 4/2, block No. 90. of Naduvakkarai village, Madras Urban Agglomeration for setting up a Hospital around Madras City.*

2. The 'Allotment Committee' at its meeting held on 28.2.91 has recommended the allotment of lands measuring 2542 sq.mts. in Survey Number 4/2 of Naduvakkarai village, Madras Urban Agglomeration to M/s.Sundaram Medical Foundation for setting up a hospital.

3. The Government have examined the request of the Foundation and have satisfied that allotment of this land to the Institution in question will subserve common good. The Government, therefore, accept the recommendation of the Allotment Committee and issue the following order:

Under section 24(1) of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamil Nadu Act 24 of 1978), the Government in cancellation of the orders already issued in G.O. (Ms) No.773, Revenue, dated 25.5.1985 here by allot the lands measuring 2542 sq.mts. in Survey Number 4/2 Block No.90 of Naduvakkarai village, Madras Urban Agglomeration to M/S.Sundaram Medical Foundation, Madras, for setting up a Hospital subject to the following conditions:-
ii) The Foundation shall provide free treatment to 30% of the out patients;
iii) The foundation shall also provide free treatment to inpatients belonging to poor families and for this purpose to reserve 25% of the total number of beds for such patients.
iv) The land value shall be paid within 30 days from the date of receipt of this order.
v) If M/s.Sundaram Medical Foundation fails to remit the amount within the period of 30 days the allotment is liable to be cancelled without assigning any reason.

vi) The possession of lands shall be handed over by the Collector of Madras to M/s.Sundaram Medical Foundation on remittance of the land value.
vii) M/s. Sundaram Medical Foundation should utilise the lands for hospital and its allied purposes within a period of two years from the date of taking possession of the land. The land shall not be utilised for any purpose other than the said purpose;
viii) The lands allotted shall not be transferred by way of sale, gift, mortgage, lease or otherwise to any person
or institution.
ix)In the event of M/s.Sundaram Medical Foundation not complying with any of the conditions of allotment, the Government shall, after giving an opportunity to them to be heard in the matter, cancel the allotment and the lands shall revest to the Government free from all encumbrances. No compensation shall be payable in respect of any building or other super structure constructed on such land in case of the land re-vesting to the Government under this clause. Receipt.'

5. The allotment was made to aid and advance public health purposes, bearing in mind the admitted position that the petitioner was not a commercial organization. According to the petitioner, there has been scrupulous compliance with the conditions adumbrated. The authorities concerned have been monitoring such compliance regularly, and there have been no violations noticed thus far.

6. The petitioner, finding the need for funds, approached the revenue department of the Government of Tamil Nadu for permission to mortgage the property to raise funds and their request had been accepted vide G.O.Ms.No.608 dated 05.10.1994 in partial modification of G.O.Ms.No.460 dated 10.04.1992. The modification order reads thus :-

> *'4.The Government have examined the request of the Managing Trustee Sundaram Medical Foundation and issue the following orders in partial modification of the G.O.Ms.No.460, Revenue, dt.10.4.92 in respect of condition (iii), and (viii) laid therein:-*
>
> *i Sundaram Medical Foundation is permitted to raise a loan from any banking or other financial institution by mortgaging the land without possession.*
>
> ii *The percentage of reservation of 25% of the total number of beds for free treatment to inpatients belonging to poor families, ordered in the said G.O. be reduced from 25% to 15%.'*

7. While this is so, demand notices had been received by the petitioner calling upon it to remit Urban Land Tax Act, 1966 (in short 'Act'/'ULT Act') in respect of the property in question. The Petitioner, being advised that it is entitled to an exemption from the provision of the ULT Act under Sections 27 or 29 thereof, moved the authorities for exemption and parallelly, challenged the demand by way of a Writ petition in W.P.No.32762 of 2002. An order came to be passed by this Court on

24.07.2019 directing the Special Commissioner/Commissioner of Land Reforms, Chennai to dispose the petition seeking exemption within a period of three months from date of receipt of copy of that order.

8. In pursuance thereof, the petitioner was called for hearing and filed detailed written submissions in support of its claim for exemption. Though the initial claim was both in terms of Sections 27 as well as 29 of the Act, learned counsel for the petitioner would agree and rightly so, that the applicable provision would only be Section 29 of the Act.

9. Section 27 grants an exemption by way of Notification prescribing reduced or nil rate of tax, issued by the Government to a class of properties or class of assessees that are found to be so entitled. Such a situation does not arise in the present case. The petitioner's entitlement would thus have to be tested only under Section 29 of the Act, the relevant portion of which reads thus:-

> '*29. Exemption:*
> ....
> *(d)(i)any urban land on which hospitals maintained by-*
> *(a) the Government, any local authority or such other authority specified by the Government in this behalf, or*
> *(b)by any private institution which is in receipt of grant either from the Central Government or from*

the State Government, have been constructed and any urban land appurtenant to such hospitals;'

10. Section 29(d)(i)(b)exempts from the levy of ULT, land maintained by private institutions upon which hospitals have been constructed or lands appurtenant to such hospitals, and which are in receipt of a grant either from the Centre or State Governments.

11. The petitioner is the beneficiary of an allotment of land under G.O.Ms.No.460 dated 10.04.1992. The allotment of land was at a concessional rate, Rs.4.5 Lakhs (approx.) for 11 grounds (approx.) a subsidized rate when compared with the market rate of the land in question, in 1992. There is no dispute raised in this regard to this position by the respondent.

12. The conditions stipulate that the land shall be resumed by the State if the allottee violates any of the conditions imposed, being concessional/free treatment to 30% of the out-patients and free treatment to 15% of the patients admitted in the hospital. There is also no dispute on the position that the petitioner has not been found wanting on any of these aspects thus far.

13. The impugned order proceeds to reject the claim for exemption on

the sole ground that the petitioner is not the recipient of a 'grant' and hence, the condition under Section 29 (d)(i)(b) has not been satisfied. In doing so, the detailed submissions of the petitioner including reference to cases have not been adverted to by the authorities, who reject the claim by way of a cryptic order.

14. Mr.K.V.Sajeev Kumar, learned Special Government Pleader appearing for the respondents makes a distinction between an 'allotment' and a 'grant', pointing out that the two are entirely different and distinct. While 'grant', equitable to a gift, is unconditional, an 'allotment' comes with conditions that have to be satisfied.

15. The State has only allotted a piece of land to the petitioner and has not extended any financial assistance whatsoever. According to him, a grant has to assume only a financial form apart from being unconditional. Thus, according to him, the allotment of land made in favour of the petitioner is not of any consequence to determine eligibility under Section 29(d)(i)(b) of the Act.

16. Having heard learned counsel I am of the considered view that the petitioner must succeed. Section 29(d)(i)(b) exempts land owned by private institutions that are in receipt of a Government grant, from levy of

ULT. The term 'grant' is not defined either in the Urban Land Tax, 1966 or in the Government Grants Act, 1895.

17. The Allahabad High Court in *Allahabad Anglo Indian Association Branch Vs. State of U.P. and Ors.* [(2019) ILR 12AII688] has exhaustively set out the dictionary meanings of the term 'grant', as follows:

> '. . . .
>
> *56. In Black's Law Dictionary, Eighth Edition, at page 719, the word "Grant" has been defined as under :*
>
> > *"Grant, n. 1. An agreement that creates a right of any description other than the one held by the grantor. Examples include leases, easements, charges, patents, franchises, powers, and licenses. 2. The formal transfer of real property. 3. The document by which a transfer is effected; esp., DEED. 4. The property or property right so transferred."*
>
> *57. Interestingly, in Black's Law Dictionary, 'Grant' has been said to be of various kinds and it has enumerated seven types of 'Grant' as under:*
>
> > *"Community grant. A grant of real property made by a government (or sometimes by an individual) for communal use, to be held in common with no right to sell. A community grant may set out specific, communal uses for the property, such as for grazing animals or a playground. Cf. Private grant.*

Escheat grant. A government's grant of escheated land to a new owner. - Also termed escheat patent.

imperfect grant. 1. A grant that requires the grantee to do something before the title passes to another. Cf. Perfect grant. 2. A grant that does not convey all rights and complete title against both private persons and government, so that the granting person or political authority may later disavow the grant. See Paschal v. Perex, 7 Tex. 368 (1851).

inclusive grant. A deed or grant that describes the boundaries of the land conveyed and excepts certain parcels within those boundaries from the conveyance, usu. Because those parcels of land are owned or claimed by others.- Also termed inclusive deed.

office grant. A grant made by a legal officer because the owner is either unwilling or unable to execute a deed to pass title, as in the case of a tax deed. See tax deed under DEED.

Perfect grant. A grant for which the grantor has done everything required to pass a complete title, and the grantee has done everything required to receive and enjoy the property in fee. Cf. Imperfect grant private grant. A grant of real property made to an individual for his or her private use, including the right to sell it. Private grants made by a government are often

> *found in the chains of title for land outside the original 13 states, esp. in former Spanish and Mexican possession."*

58. In Corpus Juris Secundum, A Complete Restatement of the Entire American Law, as developed by All Reported Cases, Volume XXXVIII, word "Grant" has been defined at page 1066-1070, as under :

> *"Grant - In General - A word which has a peculiar and appropriate meaning in the law, and is to be construed and understood according to such meaning; but its signification, in particular cases is to be determined from its connection and the manner of its use.......”*

18. In my considered view, a 'grant' is, generally, largesse of any form bestowed upon persons by the sovereign, or, in this case, the State. There can, and must be no restriction placed on the general understanding of the term, and a restriction, if at all, would only arise from the context in which the term has been used. In any event, there is no indication that a grant connotes only a financial benefit and it can result in a benefit in any form, including, but not restricted to monetary assistance.

19. In *Hajee S.V.M.Mohamed Jamaludeen Bros. & Co. Vs. Govt. of T.N.* [AIR1997SC1368] and *Mohsin Ali and others Vs. State of Madhya Pradesh* [(1975)2 SCC 122], the question for consideration was as to

whether a ‘lease’ and 'hiba' or gift of residential house to a Muslim by a Muslim Ruler, in the respective cases, may be considered as a grant.

20. In both instances, the Hon'ble Supreme Court came to the conclusion that the word 'grant' would involve the act of a Sovereign extending a benefit to a person. Thus, both the license as well as the Hiba obtained by those petitioners were held to satisfy the term 'grant'.

21. Learned SGP distinguishes the above judgments on the ground that they have been rendered in the context of a lease and are hence, not applicable in the facts and circumstances of the present case. I find this to be a distinction without a difference and thus reject this argument. The take-away from the judgments is that a 'grant', as defined in the Earls Jowtt's Dictionary of English Law, is all-encompassing, covering all assets/benefits granted or passed on from one to another under a deed, though, commonly, it is applied to rights created or transferred by the Crown or, as in this case, the State.

22. Entitlement to exemption under Section 29(d)(i)(b) is conditional upon the applicant seeking and obtaining some benefit from the State. In the present case, the petitioner has been allotted a piece of land at subsidized cost, and this amounts to a ‘grant’ from the State. The spirit and object of

the exemption under Section 29 (d)(i)(b) is in the form of health care for the public.

23. It explores and furthers a public-private partnership between entities in private, though philanthropic domain, partnering with the State in extending health care to the public. It is thus, and as the private entity is deemed to step into the role played by the State, that an exemption is given from the levy of Urban Land Tax.

24. I thus conclude, holding that while a 'grant' comprises the genus, an 'allotment of land' would constitute a species of the same. In light of the discussion and conclusion as aforesaid, the allotment of the land in question would constitute a grant, the impugned order is set aside and this writ petition allowed. No costs. Connected miscellaneous petitions are closed.

25. With the order as above, the petitioner becomes automatically entitled to the exemption sought for under the ULT Act. There is one marked distinction in the grant of exemption under the ULT Act and other revenue enactments that also extend exemption from the levy of the tax they impose. Section 101 of the Chennai City Municipal Corporation Act 1919 ('CCMC Act') dealing with general exemptions reads thus:

101. General exemptions.--- *The following buildings and lands shall be exempt from the property tax :--*

(a) places set apart for public worship and either actually so used or used for no other purposes;

(b) choultries for the occupation of which no rent is charges and choultries the rent charges for the occupation of which is used exclusively for charitable purposes ;

(c) 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 ;

(d)such ancient monuments protected under the Ancient Monuments Preservation Act, 1904 (Central Act VII of 1904 (Central Act VII of 1904), or parts thereof as are not used as residential quarters or public offices ;

(e)charitable hospitals and dispensaries but not including residential quarters attached thereto ;

(f)such hospitals and dispensaries maintained by railway administrations as may from time to time be notified by the 2[State Government], but not including residential quarters attached thereto ;]

(g)] burial and burning grounds included in the list published by the commissioner under section 321 (3) of this Act ;

(h)] the bed of the Cooum, the bed of the Adyar, the Buckingham canal, 4[5(Government lands) set apart free for recreation purposes] 6[and all such other 7[Government property] (being neither buildings not land from which in the

opinion of 8[the State Government] and income could be derived) as may from time to time be notified by the 2[State Government]]:

26. Under the IT Act, exemption is available under Section 11, the relevant portion of which reads as follows:

11. Income from property held for charitable or religious purposes.—(1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of [4][fifteen per cent.] of the income from such property;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent. of the income from such property;

(c) income derived from property held under trust—

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

. . . .

27. 'Charitable purposes', which is the pre-requisite for grant of exemption under Section 11 reads thus:

(15) 'charitable purpose' includes relief of the poor, education,yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:
Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—
(i) such activity is undertaken in the course of actual carrying out of such advancement of
any other object of general public utility; and
(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

28. While the relevant provisions of the IT Act and CCMC Act stipulate that the exemption from levy under those Acts would be available

to institutions carrying on/engaging in certain specific activities including 'charitable purposes/activity', there is no such condition in the ULT Act.

29. The sole premise for the extension of such benefit under the ULT Act is that the entity seeking the benefit of exemption is in receipt of a State grant. Thus, the need of an entity for assistance, and grant by the State of such assistance, is the sole criterion for the benefit of exemption under the ULT Act.

30. This assumes significance as there is no necessity for any other aspect of the matter to be examined for grant of the exemption from the levy of ULT unlike in the case of exemptions under other revenue enactments where the authorities would embark upon the exercise of ascertaining whether the entity seeking exemption was existing for 'charitable purposes'.

31. Undoubtedly, the activities engaged in by the petitioner would have to comply with the terms and conditions of the original letter of allotment, being G.O.Ms.No.460 dated 10.04.1992 as modified subsequently. Hence, the requirement for reservation of a certain percentage of the beds for poor families and provision of free treatment to them, is mandatory, and is to be monitored by the respondents separately. So long as there is compliance with the aforesaid and the original

allotment/grant continues undisturbed, the petitioner will, in light of the law as it exists now, be entitled to the exemption sought in respect of ULT.

28.03.2023

mpl
Index : Yes/No
Speaking Order/Non speaking Order
Neutral Citation:Yes/No

To

1.The Additional Chief Secretary &
Commissioner of land Reforms
Ezhilagam, Chepauk,
Chennai – 600 005.

2.Special Tahsildar,
(Urban Land Tax)
Egmore – Nungambakkam Taluk
Spur Tank Road,
Chennai – 600 031.

3.Assistant Commissioner
Office of the Urban Land Tax
409, Periyar E.V.T. Salai,
Amingikarrai, Chennai 600 029.

DR.ANITA SUMANTH,J.
mpl

W.P.No.10885 of 2020
&
W.M.P.Nos.13209 & 18802 of 2020

28.03.2023