



W.P.(MD) No.6367 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.6367 of 2024
and
W.M.P.(MD) Nos.5968 and 5970 of 2024**

Govel Trust
Running Aravind Eye Hospital,
Tirunelveli,
represented by its President,
P.Namperumalsamy

... Petitioner

/vs./

1.Tirunelveli City Municipal Corporation,
rep. by its Commissioner,
Tirunelveli.

2.The Assistant Commissioner,
Tirunelveli Zone,
Tirunelveli City Municipal Corporation,
Tirunelveli.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent relating to demand notices dated 26.01.2024 in Assessment Nos. 146/030/901848-146/15170 and 146/030/901849-146/15171 and the



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consequential order of attachment dated 06.03.2024 passed by the 2nd respondent in A1/11800/23 and quash the same and consequently forbear the respondents from in any manner levying, demanding or enforcing the levy of property tax for the buildings of the Petitioner in 55/2 and 55/3, High Road, Tirunelveli Junction, Tirunelveli.

For Petitioner : Mr.P.Srinivas

For Respondents : Mr.S.P.Maharajan
Special Government Pleader

ORDER

The petitioner is before this Court challenging the impugned notice demanding the property tax from the petitioner under the provisions of the Coimbatore City Municipal Corporation Act, 1981.

2.The case of the petitioner is that the petitioner is a charitable institution, which is not declaring any profit. The surplus that is generated by the petitioner from the dispensing of medical services in the treatment of eye ailment is deployed for creating further infrastructures in the form of hospitals to provide treatments to needy.



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3.It is submitted that the cost of treatment provided in the hospital are highly subsidized and therefore, there is no justification in demanding property tax from the petitioner under the provisions of the Coimbatore City Municipal Corporation Act, 1981.

4.That apart, the learned counsel for the petitioner would draw attention to the decision of this Court rendered for the properties located within the jurisdiction of Tirunelveli City in W.P.No.898 of 1990 on 15.11.1998, wherein the Court had followed an earlier decision for its hospitals in Madurai in W.P.No. 3235 of 1985 dated 10.05.1994 and therefore submits that the demand of property tax from the petitioner is unjustified.

5.The learned counsel for the petitioner would also draw attention to the decision of this Court rendered on 23.01.2009 in W.P.Nos.14414 and 14415 of 1999 in respect of the properties of the petitioner within the jurisdiction of Coimbatore City.



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6.It is submitted that the said decision of this Court dated 23.01.2009 was in appeal before the Hon'ble Supreme Court and the SLP was dismissed on 13.01.2014 in Special Leave to Appeal Civil CC 22178-22179 of 2013.

7.On the other hand, the learned Special Government Pleader for the respondents would place reliance on para 13 and 14 of the counter, which reads as under:

“13.It is also submitted that the petitioner has constructed additional buildings recently for which the respondent, Tirunelveli Municipal Corporation has given building plan approval vide GP1/1955/2022 dated 12.05.2023 for which the petitioner has not applied for the assessment of property tax till date. The extent of new buildings and tentative assessment are as follows:

<i>Total extent of New buildings</i>	<i>1,89,302 square feet</i>	
<i>Buildings used for Commercial purpose</i>	<i>1,50,339 square feet</i>	<i>19,54,407 rupees per Half yearly (tentative)</i>
<i>Buildings used for Residential purpose</i>	<i>38,963 square feet</i>	<i>2,33,778 rupees per Half yearly (tentative)</i>

The total assessment to be paid is 43,76,370 rupees tentatively for one financial year (i.e., two half yearly)

14.It is a known fact that the only source of fund for the Urban Local Bodies is by means of Tax Collection. Property Tax is the major source of income for the Urban local bodies. For the prevention of



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Revenue loss to the Urban Local bodies, levy and collection of property tax without omission is mandatory and legal.”

8.He specifically drew attention of this Court to the decision rendered by this Court in WP.No.1639 of 2020 (***The Institute of Franciscan Missionaries of Mary Vs. The Commissioner and other***) dated 14.03.2022. It is submitted that the issue has been examined threadbare in the context of Coimbatore City Municipal Corporation Act, 1981 and in the context of the provisions of the other enactments.

9.It is submitted that similar view was also taken by the learned single Judge of this Court in ***Sundaram Medical Foundation Vs. The Commissioner of Corporation of Chennai*** reported in ***CDJ 2017 MHC 5265***.

10.The learned Special Government Pleader would submit that the issue is governed by the decision of this Court rendered in W.P.(MD) No.14508 of 2016 (***Velammal Educational Trust Vs. The State of Tamil Nadu***) dated 22.11.2017, wherein this Court had observed as under:



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“19. To make the proviso effective and operative, on raising of the demand, if the respondent Hospital is entitled to any exemption, by virtue of [Section 123\(e\)](#) of the said Act, the only mechanism available for them is to approach the respondent - Corporation, satisfy them that they are entitled to exemption under [section 123\(e\)](#) of the said Act, as the proviso made it very clear that such exemption is not automatic because nothing contained in clause (a) (c) and (e) shall be deemed to exempt from payment of property tax.

20. Therefore, when the respondent - Corporation relies upon not only the receipt of amount from the patients, but also the rent received towards Canteen and fees collected for parking the vehicles and other sources, whether those receipts would attract rent or not, has to be decided only by the assessing authority, at the instance of objection or revision by the owner of the building, even if they are charitable hospital and dispensaries. Without that process being resorted to, it may not be proper to quash the demand notice itself, assuming the receipt of the amount, by itself, would not amount to a rent.

.....

24. In these circumstances, this Court holds that the benefit conferred under [Section 122\(e\)](#) of Madurai City Municipal Corporation Act, 1971, is not automatic, in view of the proviso to [Section 122\(e\)](#) of the Act and the only course available for the petitioners - hospitals is that on receipt of the demand notice, they are at liberty to either make an objection or file a revision enclosing the material to prove that they are entitled to exemption.

25. In the result,

- (i) W.P.(MD)Nos.14508 to 14510, 14517 and 14518 of 2016 are disposed of;
- (ii) The petitioners ? hospitals are at liberty to make a representation to the respondent - Corporation objecting to the demand of property tax, enclosing all the relevant materials, within a period of six weeks from the date of receipt of a copy of this order;
- (iii) On receipt of the same, the respondent - Corporation shall pass appropriate orders, considering the materials furnished by the petitioners ? hospitals after conducting proper inspection of the



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premises, for which exemption is sought for and taking note of the copies of receipts to be furnished by them as well as the daily room rent separately collected by the petitioners - hospitals from the patients, which may vary depending upon the nature and period and in accordance with law; and

(iv) Considering the huge arrears by the petitioners ? hospitals, the petitioners ? hospitals are directed to make a payment of 1/3rd of the arrears of the impugned demand, which shall be, of course, subject to the final order to be passed by the respondent - Corporation in this regard.

..... ”

11.In *The Institute of Franciscan Missionaries of Mary Vs. The Commissioner and other*, vide order dated 14.03.2022, this Court in WP.No.1639 of 2020, held as under:

“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.

77.Sub Clause (xv) to Clause 2 of the petitioner's society indicates that the other object is to employ on such terms and



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conditions as the society may deem fit and necessary complement of staff both teaching and non-teaching, establishment for the educational and training institutions, and the staff of doctors, general or specialised, medical practioners, midwives and nurses, pharmacists, compounders for the hospital, clinics and dispensaries, and other necessary staff needed at all levels for all the intuitions and activities and for the administration and conduct of the society as a whole, from qualified persons, including the members of the society and to pay them salaries, wages, fees, remuneration and honoraria, and when necessity arises and the exigencies of circumstances require, to transfer, dispense with, terminate or dismiss any of them.

78. Some of others Sub Clauses to Clause 2 which are relevant for deciding the issue in hand are reproduced below:-

(xvii) To educate, train, and assist financially or otherwise the education and training, general or specialised, in India or abroad, of the members of the society and other personnel for the purposes of the society, and to meet the extra expenses of the visiting members of the society going abroad, in the course of business or attending specialised and/or refresher courses in India and abroad.

(xviii)

(xix)

(xx) To start, establish and maintain separate funds:

For the capital funds consisting of the liquid capital of the society.

For the new programmes, activities and projects of the society.



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1.For the repair, maintenance, renovation, alteration or extension of existing buildings and structures, and for the repair and maintenance of machinery, apparatus instruments and tools, medical or otherwise and all other equipment including laboratories and libraries and all other paraphernalia belonging to the institutions of the society and for the replenishment of the old equipment and for the purchase of new ones needed to up date the equipment and requirements o the institutions of the society.

2.A reserve fund for the promotion of the activities of the society including the maintenance and the support of the members of the society, the education and training of personal needed for the purposes of the society.

And to pay into such funds periodically or annually such sums as are possible and to invest the same in approved banks or securities or in any manner authorised by law.

79.Thus, a reading of the objects of the society indicates that the object of the hospital is not purely charitable in nature. The fact that the Memorandum of the Society itself authorises collection of charges from the persons receiving treatment in hospital, nursing school and work rooms indicates that the petitioner's object is not a charitable hospital.

80.In case of a Charitable Institution, there is an absence of quid pro-quo for services. The Charitable Institutions largely depend on the Charity and donations from public to achieve their objects as per the Trust Deed in case of a Charitable Institution or Memorandum of Association in case of a Society. The Charitable Institutions are ordinarily not expected to involve themselves in the generation of income and the economic activities unless such activity



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itself is meant for re-habiting its beneficiaries. Such Institutions sometimes employ physically handicapped persons or mentally challenged persons and destitute and/or other physically challenged persons etc. for the generation of income. Generation of income in such case is incidental to the main activity. Generation of income can be a by-product of the charitable activity. Therefore, there is no merit in the contention of the petitioner that it is a charitable hospital.

81.I am therefore unable to apply to the decision of this Court in *Parivar Seva Sanstha Vs. The Commissioner*, the Corporation of Chennai, in W.P.No.32041 of 2019, dated 29.10.2020 to the facts of this case.

82.Though few decisions of this Court in *PSG & Sons Charities* case referred to supra and in *Coimbatore Masonic Charity Trust* case referred to supra have been cited, they are of no material consequences to the fact of the present case in the light of the above discussion. No documents have been furnished by the petitioner to justify the claim for exemption, so that, the case can be remitted back. In any event, the objects of the society also do not indicate that they are charitable in nature.

83.The decision in *Queen's Educational Society* case referred to supra rendered in the context of *Section 10(23-C)(iii-ad) & (vi) of the Income Tax Act, 1961* is of no relevance to the facts of the present case as it was rendered in the context of the aforesaid provisions. It operates under a different field. The issue there was whether an institution making large profits and ploughs such profits back for purchasing assets for additional institutions was entitled for exemption under *Section 10(23-C)(iii-ad) & (vi) of the Income Tax Act, 1961*. It was held that such an institution cannot be said to be existing solely for educational purposes. The law was summarized as follows:-

11.Thus, the law common to *Sections 10(23-C)(iii-ad) and (vi)* may be summed up as follows:

(1)Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely



for educational purposes and becomes an institution for the purpose of making profit.

(2)The predominant object test must be applied—the purpose of education should not be submerged by a profit-making motive.

(3)A distinction must be drawn between the making of a surplus and an institution being carried on “for profit”. No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

(4)If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes.

(5)The ultimate test is whether on an overall view of the matter in the assessment year concerned the object is to make profit as opposed to educating persons.

84.The question in the present case is not about making profit. Issue is whether the hospital is a charitable hospital or not. In this case, it cannot be said that the petitioner was a charitable hospital either on admitted facts or based on the registered Memorandum of Association dated 24.01.1973. The subsequent decision of the Hon'ble Supreme Court in St. Peter's Educational Society case referred to supra is also therefore of no relevance to the facts of the present case.

85.When under a similar circumstances the Division Bench of this Court has held this exemption was not available to the said Hospital, it remains inexplicable how a different view can be entertained.

86.Thus, if the objects are distributive, each and every one of the objects must be charitable in order to conclude that the trust might was a valid charity. Same principle is applicable in the case of a building in which medical hospital is being run with a charitable



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object. Merely because a portion of service is charitable would clothe such hospital with a tag of a charitable hospital to claim exemption. If such hospital is collecting money for the services rendered, it is not entitled to be called as charitable hospital.

.....

91. Merely because the petitioner is having certain out reach programmes which may be charitable in nature or that a section of patients are given free treatment would not automatically render the petitioner a charitable hospital. It would not mean that an exemption from payment of property tax can allowed to the petitioner.

92. Further, under the [Section 135](#) of the Companies Act, 2013 and the provisions of [Companies Act, 1956](#), the companies enjoying the profits were/are required to contribute for public cause as Corporate Social Responsibility (CSR). The amount that has to be spent towards Corporate Social Responsibility is out of profits. However, that does not make such company as a “Charitable Institution”.

93. If the amount are collected for treating the patients and a portion of the amount is used for doing charity, it would not mean that the hospital becomes a charitable hospital. This may be explained with an example. An individual may do a charity out of his earning by contributing the amount for charitable cause, but, such an individual cannot be labelled as a “charitable person” even though he may be doing charity. It means such a person is doing charity.

94. At best of the act of the petitioner giving free treatment for few poor and needy patients while collecting fees for giving treatment to those patients who can afford is not sufficient to hold the petitioner Charitable Institution / Hospital. Few acts of benevolence and charity should not be construed in such a manner to label such a person as a Charitable Institution.

95. I am therefore in agreement with the word of caution sounded by this Court in *Sundaram Medical Foundation* The Commissioner Corporation of Chennai, CDJ 2017 MHC 5265 that the authorities are bound to be cautious, while scrutinizing all material facts and circum- stances, for taking a decision.



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96.I therefore hold the claim for exemption under **Section 123(e)** of the Coimbatore City Municipal Corporation Act, 1981 by the petitioner is misconceived. Therefore, there are no merits in this Writ Petition.”

12.Considering the above, I am of the view that there is no merit in the present writ petition. Under these circumstances, the present writ petition is partly allowed to the extent that it is covered by the period in W.P.No.898 of 1990 vide order dated 15.11.1998 for the initial period. The Writ Petition is disposed of for the balance period, in terms of the decision of this Court rendered in ***Velammal Educational Trust Vs. The state of Tamil Nadu*** vide order dated 22.11.2017 in W.P.(MD) No.14508 of 2016 and in ***The Institute of Franciscan Missionaries of Mary Vs. The Commissioner and other*** vide order dated 14.03.2022 in WP.No. 1639 of 2020.

13.The respondent Corporation shall pass such order in the light of the decision of this Court in ***The Institute of Franciscan Missionaries of Mary Vs. The Commissioner and other*** vide order dated 14.03.2022 in WP.No.1639 of 2020.



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No costs. Consequently, connected Miscellaneous Petitions are closed.

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Internet : Yes / No

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To

1.Tirunelveli City Municipal Corporation,
rep. by its Commissioner,
Tirunelveli.

2.The Assistant Commissioner,
Tirunelveli Zone,
Tirunelveli City Municipal Corporation,
Tirunelveli.



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C.SARAVANAN, J.

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