(2010) 04 MAD CK 0309

In the Madras High Court

Case No : Writ Petition (MD) No. 10448 of 2007 and M.P. (MD) No. 2 of 2007

A. Subramanian Managing Trustee of Merit Educational Charitable Trust-cum-Principal of Merit Matriculation School — APPELLANT

Vs

The Executive Officer, III Grade Municipality — RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 81, 81(1), 83, 83(1)
Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 — Rule 15
Tamil Nadu Village Panchayats Act, 1958 — Section 171, 171(1), 172, 176

Citation : (2010) 4 CTC 31

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : V. Meenakshisundaram, for M. Vallinayagam, for the Appellant; M. Saravanakumar, for the Respondent

Final Decision : Allowed

Judgement

R.S. Ramanathan, J.—Heard both sides.

2. The petitioner is the Managing Trustee of Merit Educational Charitable Trust cum Principal of Merit Matriculation School, Ambasamudram, Tirunelveli District. It is an unaided educational institution run by the said Trust and the Matriculation school is imparting education to 200 students studying in that school. The school has constructed buildings namely Block A to E and Door No. 1 was allotted to the buildings and the respondent Municipality issued demand notice and the said notification, dated 05.10.2007 was issued for collecting the property tax for buildings owned by the petitioner''s Institution and the same is challenged in this writ petition.

3. It is stated in the affidavit that the petitioner''s Institution buildings are used for educational purpose and therefore, as per Section 83(c) of the Tamil Nadu District Municipalities Act, such buildings are exempted from the property tax

and hence, the respondent cannot levy any property tax for those buildings.

4. The respondent filed a counter stating that the petitioner is not entitled to claim any exemption and they are not imparting education as a Charitable Trust and they are collecting huge fees from the students and therefore, even though the school is run by the Trust, they are not entitled to claim exemption from property tax. It is further stated that the petitioner has not obtained permission from the Municipal Council for exemption of property tax for their buildings and therefore, they are liable to pay the property tax for the buildings owned by them.

5. Mr. V. Meenakshisundaram, the learned Counsel appearing for the petitioner submitted that u/s 83(1)(c) of the Tamil Nadu District Municipalities Act, exemption was given to buildings used for educational purpose, including hostel attached thereto and they are claiming exemption not on the basis of running a Charitable Trust, but on the basis of the buildings used for educational purposes and therefore, as per the above said provision, property tax cannot be levied in respect of buildings used for educational purpose.

6. Mr. M. Saravanakumar, the learned Counsel appearing for the respondent submitted that in the Full Bench Judgment reported in 2009 (8) MLJ 245 in the case of President, K. Vellakulam Panchayat, Kallikudi Chatram, Madurai District v. Kamaraju College of Engineering and Technology Managing Board, rep. by its Secretary S.P.G.C. Srimurugan, Virudhungar and in 2008 (4) CTC 715 in the case of Kamalakshi Pandyurangan College of Pharmacy ,rep. by its Secretary and Correspondent, R. Parimala Chandran, Ayyampalayam Village Post, Tiruvannamalai, 606603 v. The President, Ayyampalayam Village, Panchayat, Tiruvannamalai, this Court has held that there is no automatic exemption to the buildings used for educational purpose and that has to be decided by the Local Authorities and unless, exemption is granted by the local authorities, the buildings owned by the educational institutions are liable to be assessed for property tax and further, the petitioner is running educational institution as an un-aided institution and therefore, exemption cannot be claimed for such institution as laid down in the judgment reported in 2008 (4) CTC 715 in the case of Kamalaksh Panddyurangan College of Pharmacy v. The President, Ayyampalayam Village Panchayat.

7. Mr. V. Meenakisundaram, the learned Counsel appearing for the petitioner distinguished the Full Bench judgment reported in 2009 (8) MLJ 245 in the case of President v. Kamaraj College of Engg. and Technology Managing Board, rep. by its Secretary S.P.G.C. Srimurugan, Virudhungar and submitted that the Full Bench judgment was rendered with reference to the provision of the Tamil Nadu Panchayat Act and as per the provision of the Tamil Nadu Panchayat Act, no exemption can be given for property tax, except in accordance with Rules and Rule 15(c) of the Tamil Nadu Panchayat speaks about the exemption to be given to the Educational Institution and the Honourable Full Bench of this Court, after interpreting Sections 171, 172 and 176 of the Tamil Nadu Panchayat Act and Rule

15(c) held that Rule 15 is not mandatory and it is only an enabling provision empowering Village Panchayat or Panchayat Union to grant exemption and unless exemption is granted, the buildings are not eligible to claim exemption. But, in the case of Municipality, there is no such provision similar to Section 176 of the Tamil Nadu Panchayat Act and u/s 83(1)(c) of the Tamil Nadu District Municipalities Act, exemption is given to buildings used for educational purposes and therefore, the Full Bench judgment cannot be made applicable to the facts of this case.

8. He further argued that similarly the judgment reported in 2008(4) CTC 715 cannot also be applied to the facts of this case as it was rendered with reference to the Tamil Nadu Village Panchayat Act (Assessment and Development of Taxes) Rules 1999 and Rule 15(c) as amended by Act G.O.Ms. No. 38, Rural Development and Panchayat Raj, dated 05.03.2008.

9. I have given my anxious consideration to the submissions made by both counsels.

10. A perusal of the Full Bench judgment reported in 2009 (8) MLJ 245 in the case of President, K. Vellakulam Panchyat, Kallikudi Chatram, Madurai District v. Kamaraj College of Engineering and Technology Managing Board, rep. by its Secretary S.P.G.C, Srimurugan Virudhunagar would reveal that with reference to Tamil Nadu Panchayat Rules and Act made therein, having regard to the provisions of Sections 171, 172 and 176 of the Tamil Nadu Panchayat Act, Rule 15(c) was interpreted and is was held as follows:

Rule 15 is a subordinate legislation which cannot over-ride the substantive provisions of the Act such as Section 171(1), 172 and 176. Section 171(1) mandates the Village Panchayat to levy house tax on all the houses of the Village Panchayat. The mandate is also clear from Section 172, wherein the basis of levy of house tax has been prescribed. There is a prohibition from grant of exemption of surcharge or tax u/s 176 except in accordance with the rules. Therefore, if Rule 15 is read with the aforesaid Sections 171, 172 and 176, it is to be held that under Rule 15 it is not mandatory to grant exemption from house tax, but is an enabling provision allowing the Village Panchayat to grant exemption to a class of buildings a specified therein, if it so chooses. Rule 15 cannot be held to be mandatory to exempt a class of buildings from payment of house tax, which otherwise will run counter to Sections 171, 172 and 176 of the Act and may render Rule 15 ultra vires. Therefore, the word "shall" used in Rule 15 has to be read as "may" to give effect to the said rule of exemption.

We, accordingly, hold that the exemption prescribed under Rule 15 is not mandatory and is an enabling provision empowering the Village Panchayat or Panchayat Union to grant exemption to a class of buildings as specified therein. The corollary is that it is open for the Village Panchayat or Panchayat Union not to grant such exemption in favour of one or other class of such buildings.

Therefore, having regard to the specific provision of Section 171, which mandates Village Panchayat to levy house tax on all houses of the Village Panchayat and the provisions contained u/s 176, by which no exemption shall be granted to the payment of tax except in accordance with rules, it was held that though Rule 15(c) permits exemption to be given to buildings used for educational purpose, that cannot be claimed as of right and exemption has to be given by Municipal Council. But the provision of Tamil Nadu District Municipalities Act is different and under that Act exemption is given u/s 83(1)(c) of the Tamil Nadu District Municipalities Act and there is no total prohibition from granting exemption to certain buildings from the payment of house tax under the said Act.

11. Section 81 of the Tamil Nadu District Municipalities Act deals with Description and classes of property tax:

As per Section 81(1) If the council by resolution determines that a property tax shall be levied, such tax shall be levied on all buildings and lands within municipal limits save those exempted by or under this Act or any other law.

Therefore, by resolution passed in the Municipal Council, property tax shall be levied on all buildings and lands, unless exemption is granted under the Act.

12. In other-words, Section 81 of the Tamil Nadu District Municipalities Act clearly states that in the absence of any exemption under the Act or any other law, all buildings can be assessed to property tax on the basis of the resolution passed in the Municipal Council.

13. Section 83 of the Tamil Nadu District Municipalities Act deals with general exemption and as per Section 83(1)(c) of the Act, buildings used for educational purpose including hostel attached thereto are exempted.

Therefore, having regard to Section 81 and 83 of the Tamil Nadu District Municipalities Act, the Act itself provides for exemption from the levy of property tax in respect of buildings used for educational purpose and therefore, the buildings used for educational purpose cannot be assessed to property tax. In the case of Panchayat, while dealing with the property tax in respect of house, Section 171 of the Tamil Nadu Panchayat Act says that every Village Panchayat shall levy in the Panchayat Village house tax and as per Section 172, house tax shall be levied on all houses in every Village Panchayat. Therefore, it was mandated that every house in the Panchayat shall be assessed to property tax.

14. Further, u/s 176 of the Tamil Nadu Panchayat Act, no exemption from the payment of any surcharge tax specified in Section 171 shall be granted by the Village Panchayat, except in accordance with the rules. Therefore, when the section prohibits the granting of exemption except in accordance with rules, though the rules provide for granting exemption to buildings for educational purpose, it was held by the Full Bench of this Honourable Court that exemption is not automatic, unless exemption is granted by the Village Panchayat by passing a resolution, buildings used for the educational purpose cannot claim exemption from the payment of property tax as of right. But in the case of Municipalities, as

stated supra, Section 81 of the Tamil Nadu District Municipalities Act, makes it clear that tax shall be levied on all buildings on the basis of the resolution passed by the Municipal Council save those exempted by or under this Act or any other law. Therefore, Section 81 of the Tamil Nadu District Municipalities Act which deals with levy of property tax also mention about exemption, that can be given to certain buildings from the assessment of property tax and as per Section 83(1)(c) of the Tamil Nadu District Municipalities Act, buildings used for educational purposes are exempted.

15. Further, having regard to the exemption granted u/s 83(1) of the Tamil Nadu District Municipalities Act, the question of aided or un-aided or minority or non-minority does not arise and any building used for educational purposes including hostels are exempted.

16. It was contended by the learned Counsel appearing for the respondent, Mr. M. Saravanakumar that only buildings used for educational purpose are exempted, even according to Section 83(1)(c) of the Tamil Nadu District Municipalities Act and in this case apart from class rooms and hostels other buildings such as office of the educational institution can be assessed to property tax and exemption cannot be claimed for those buildings. The argument of the learned Counsel appearing for the respondent cannot be accepted, having regard to the wordings used in Section 81(1)(c) of the Tamil Nadu District Municipalities Act. As per Section 83(1)(c) of the Tamil Nadu District Municipalities Act, buildings used for educational purpose and hence, hostels are given exemption. The phrase used "buildings" for educational purpose", in my opinion, it includes not only class rooms, but also office rooms, which are essential and integral part of an educational institution and without an office, an educational institution cannot be run. Therefore, the buildings used for running office is also essential for imparting education and therefore, those buildings will also come under the category of educational purpose. Therefore, having regard to the specific provisions of Section 83(1)(c) of the Tamil Nadu District Municipalities Act, the buildings used for educational purposes of the petitioner''s institution are exempted from assessment of property tax and the respondents cannot claim any levy for those buildings.

17. In fine, the writ petition is allowed and the impugned notices are quashed. Consequently, connected Miscellaneous Petition is closed. No costs.