(2013) 04 KL CK 0088

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 4028 of 2010 and 14368 of 2011

Fathima Public School — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision : 10-04-2013

Acts Referred:

Kerala Municipalities Act, 1994 — Section 235

Citation : (2013) 2 KHC 717 : (2013) 2 KLT 527

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : T.P.M. Ibrahim Khan, for the Appellant; B. Krishnamani and K.A. Sanjeetha, Government Pleader, for the Respondent

Judgement

Antony Dominic, J.—These Writ Petitions are filed by schools affiliated to the C.B.S.E. and they say that they are entitled to be exempted from the levy of property tax payable under the provision of S. 235 of the Kerala Municipality Act, 1994. S. 235(d) as it originally stood provided that the buildings recognised by Government or registered with the Municipality and owned and occupied by educational institutions and used for teaching are exempted from property tax. However, S. 235 was substituted by Act 30 of 2009 w.e.f. 7.10.2009 and the substituted S. 235(b) reads thus: 235. Exemption from property tax, service cess etc.- The following buildings and lands shall be exempted from the property tax as may be levied u/s 233 and service cess as may be levied under sub-section (4) of section 230, namely:-

(a) ....

(b) buildings exclusively used for educational purposes or allied purposes under the ownership of educational institutions owned by the Government, aided or functioning with the financial assistance of the Government and the hostel buildings wherein the students of the said institutions reside.

Nobody has a case that the petitioners are educational institutions owned by the

Government, aided or is functioning with the financial assistance of the Government. If that be so, they are not exempted from the levy of property tax and the claim of exemption is untenable.

2. However in so far as W.P. (C) No. 4028/10 is concerned, Exts.P1 and demand notices show that the property tax demanded is for the period from 2006-07 to 2009-10. Similarly Exts.P4 and P5 demand notices produced in W.P. (C) No. 14368/11 show that the property tax demanded is for the period from 2007-08 to 2010-11. As already stated, until 7.10.2009 when S. 235 was substituted, S. 235(d) as it stood then entitled the petitioners for exemption. The substitution of the section being only prospective, the liability for property tax can arise only for the period subsequent to 7.10.2009. Consequently, the demands for property tax for the period prior to 7.10.2009 are unsustainable.

Accordingly, the Writ petitions are disposed of quashing Exs.P1 and P2 in W.P. (C) No. 4028/10 and Exts.P4 and P5 in W.P. (C) No. 14368/11 and directing that the Punalur Municipality, the 2nd respondent in these cases will issue fresh demands for property tax in the light of the findings hereinabove.

