

(2010) 12 MAD CK 0274

In the Madras High Court

Case No : W.P (MD) No. 8193 of 2005 and W.P.M.P. (MD) No. 8859 of 2005

Kamak Higher Secondary School

APPELLANT

Vs

President, Krishnapperi Panchayat

RESPONDENT

Date of Decision : 07-12-2010

Acts Referred:

Constitution of India, 1950 — Article 243H

Tamil Nadu Panchayats Act, 1994 — Section 168, 171, 172, 172(3), 176

Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 — Rule 10, 15, 16(1), 16(2), 8

Citation : (2011) 2 MLJ 35 : (2011) 6 RCR(Civil) 2376

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Judgement

M. Venugopal, J.

1 .The Petitioner/Kamak Higher Secondary School, Krishnapperi, represented by its Correspondent/ Secretary, Srivilliputtur, Virudhunagar District has filed the present writ petition seeking a Writ of Certiorari in calling for the records pertaining to the proceedings of the Respondent/the President, Krishnapperi Panchayat requiring the Petitioner to pay the house tax for the hostel building in respect of the years 1995 to 2004 and to quash the same.

2. In the averments stated in this writ petition, according to the Petitioner, the Petitioner is a private school coming under the control of the Tamil Nadu Recognised Private Schools Regulation Act 1973. The School is also in receipt of 100% aid from the Tamil Nadu State Government under the Grant in Aid Code.

3. The learned Counsel for the Petitioner submits that the Petitioner is a middle school and subsequently, it has been upgraded as High School in the year 1986. Again the Petitioner/the School has been upgraded as the Higher Secondary School from the year 1989. The Petitioner/the School has a hostel attached in

the name of G. Munuchamy-Kaleeshwari Students Hostel. The said hostel building is owned by the Petitioner/the School. There are 53 boys residing in the hostel.

4. The plea taken on behalf of the Petitioner/the School is that the Petitioner is not charging Rent from the students and Full Mess Charges and the Wages paid to the cook and other Assistants and all other incidental expenses are divided amongst the students. The mess charges are collected from the students. There is no rent collected by the School from any of the students or the Warden. While this being so, the Respondent/the president, Krishnapperi Panchayat has issued a demand notice dated 17.8.2005 addressed to the Correspondent of the Petitioner/the School claiming a sum of Rs. 1,10,000/- (Rupees One Lakh and Ten Thousand only) at the rate of Rs. 5 per one sq. ft towards property tax, in respect of the students' hostel run under the Petitioner's Educational Institution based on the extent of the hostel and further directed the Petitioner to pay the aforesaid property tax amount within a period of 15 days from the date of receipt of a copy of the said letter.

5. Expatiating her submissions, the learned Counsel for the Petitioner contends that the impugned demand notice dated 17.8.2005 issued by the Respondent/the President, Krishnapperi Panchayat, is a time barred one besides being an illegal one and further, it is opposed to the principles of Natural Justice.

6. The learned Counsel for the Petitioner submits that the Respondent has wrongly relied on the order passed by this Court dated 22.8.2002 in W.P. No. 29698 of 2002 and indeed, the said writ petition has been filed by one Venkateswara Traders against the Regional Provident Fund Commissioner and others, which has no bearing on the present facts and circumstances of the case and this has resulted in serious miscarriage of justice.

7. It is also the contention of the learned Counsel for the Petitioner that the plinth area of the hostel building does not measure an extent of 2260 sq.ft as mentioned in the demand notice dated 17.8.2005 issued by the Respondent and moreover, the rate as determined by the Respondent in the demand notice dated 17.8.2005 has not been determined in accordance with Sub-section (3) of Section 172 of the Tamil Nadu Panchayats Act, 1994.

8. Advancing her arguments, the learned Counsel for the Petitioner brings it to the notice of this Court that there is no prior publication of any resolution passed by the Respondent as per Sub-clause (4) of Clause 7 of the Tamil Nadu Panchayat(Assessment and Collection of Taxes) Rules 1999, wherein it is mandatory on the part of the Respondent/the president, Krishnapperi Panchayat, to publish a notice at least in one Tamil News Paper and also on the notice Board of the Office of the Village Panchayat and also the other places and also by beat of drum of its intention proposed to levy any tax fixing a reasonable period not being less than one month and submission of objection and consideration of the objection within the stipulated period before passing the resolution.

9. A core contention advanced on behalf of the Petitioner/the School is that inasmuch as there is non-compliance of Sub-clause (4) of Clause 7 of the Tamil Nadu Panchayat(Assessment and Collection of Taxes) Rules 1999, a demand made by the Respondent in its notice dated 17.8.2005 is totally an illegal one. Further, Rule 8 of Tamil Nadu Panchayat (Assessment and Collection of Taxes) Rules, 1999, enjoins that a preparation of house tax assessment list in the forms as specified by the Government duly signed and approved by the Executive Authority and in the case on hand, the said rule has not been followed by the concern.

10. Apart from the above, it is the contention of the learned Counsel for the Petitioner that the Respondent in the notice dated 17.8.2005 addressed to the Correspondent of the Petitioner/the School cannot demand property tax from the year 1995 either retrospectively or retroactively and in fact, the Respondent/the president, Krishnapperi Panchayat, while issuing demand notice dated 17.8.2005 to the Petitioner/the School cannot act beyond the powers confined on him under the Tamil Nadu Panchayats Act, 1994 or under the Rules and therefore, she prays for allowing the writ petition in furtherance of substantial cause of justice.

11. In the demand notice dated 17.8.2005 issued by the Respondent/the President, Krishnapperi Panchayat addressed to the Correspondent of the Petitioner/the School, the property tax in respect of the hostel run by the Petitioner is mentioned as follows:

Sl. No

Year

Building Area(in Sqft)

Property Tax

1

1995

2260

11,000

2

1996

2260

11,000

3

1997

2260

11,000

4

1998

2260

11,000

5

1999

2260

11,000

6

2000

2260

11,000

7

2001

2260

11,000

8

2002

2260

11,000

9

2003

2260

11,000

10

2004

2260

11,000

Total

Rs. 1,10,000

12. The Respondent/the President, Krishnapperi Panchayat has made an column aggregating in all sum of Rs. 1,10,000/- (Rupees One Lakh and Ten Thousand only) as property tax for the periods from the year 1995 to 2004.

13. Though the Respondent/the President, Krishnapperi Panchayat, in the demand notice dated 17.8.2005 addressed to the Correspondent of the Petitioner/ the School has referred to the order in W.P. No. 28698 of 2002, but on perusal of the said order dated 22.8.2002 between Venkateswara Traders, represented by its Proprietor v. The Regional Provident Fund Commissioner and two Others, it is clearly pointed out that the writ Petitioner therein being an aggrieved person against the order of attachment dated 7.3.2002 made by the second Respondent/ the Recovery Officer, the Office of the Regional Provident Fund Commissioner, Coimbatore-18 towards the orders of Provident Fund contribution by the third Respondent/the Narasimha Mills Limited, Coimbatore etc. attaching the properties of the Petitioner therein viz., 22 bags of yarn etc, has filed the said writ petition. Suffice it, for this Court to point out that the order passed in Writ Petition No. 29698 of 2002 dated 22.8.2002 does not anywhere relate to the facts of the present case on hand. Obviously, the Respondent/the president, Krishnapperi Panchayat in the demand notice dated 17.8.2005 has wrongly quoted the order passed by this Court in W.P. No. 29698 of 2002 dated 22.8.2002.

14. Be that as it may, at this juncture, this Court pertinently points out that Section 172(3) of the Tamil Nadu Panchayats Act, 1994, which specifies as follows:

The Government shall, by notification, determine in regard to any panchayat village or any class of panchayat villages whether the house-tax shall be levied every half-year or year and in so doing have regard to the following matters, namely:

- (a) the classification of the local areas u/s 4;
- (b) the annual receipts of the village panchayat;
- (c) the population of the panchayat village and the predominant occupation of such population; and
- (d) such other matters as may be prescribed.

15. Therefore, from the ingredients of Section 172(3) of the Tamil Nadu Panchayats Act 1994, it is candidly clear that the Government shall, by notification, determine in regard to any panchayat or any class of panchayat villages whether the house-tax shall be levied either half-year or year and by doing so, it shall account for record to the matters mentioning in a to d as referred to supra.

16. The learned Counsel for the Petitioner submits that the Tamil Nadu

Panchayats Act, 1994 speaks of house tax only and there is no separate column for property tax. Now, as far as the present case is concerned, the matter revolves in a narrow compass viz., whether the issuance of demand notice dated 17.8.2005 by the Respondent/the President, Krishnapperi Panchayat to the Petitioner/the school in respect of the property tax for the period from the year 1995 to 2004 is legally sustainable one in the eye of law.

17. This Court recalls the decision of this Court in *Sriram Educational Trust Vs. The President, 89, Perumalpattu Panchayat Union*, , whereby and whereunder it is held thus: (Ratio Decidendi)

1. The dominant object or use of the building for educational purposes alone decides the claim for exemption from levy of property tax under the Tamil Nadu Panchayat Act.

2. The cardinal rule of construction of any statute is that the statute must be understood according to the plain language. Unless there are adequate grounds to justify the inference of what the legislature clearly so intended, nothing be added or subtracted therefrom.

3. Those who claim an exemption for ability must bring themselves within the terms of exemption provisions and any claim of exemption from payment of tax must be clearly defined and founded on plain language.

4. If the wording of the Section is clear, then benefits, which are not available cannot be denied or conferred as the case may be ignoring or misinterpreting the words in the Section, haunted by a supposed intention of the provision.

5. The over all fee charged for the facilities offered as part of undergoing schooling therein does not make a student tenant as in the normal meaning of the term. There does not arise any Landlord-Tenant relationship. Consequently, hostel premises cannot be said to yield rent to justify the levy of property tax.

18. It is further in the aforesaid decision at page No. 351, it is held as follows:

On a reading of exemption provision, it is clear that wherever the Rule contemplated a qualification to any class of houses as a condition for availing the exemption, it is specific enough to say so.

There are no other qualifying words to attend on to the phrase "buildings used for educational purposes including hostels". Moreover, it is laid down that "if the wording of the Section is clear, then benefits, which are not available cannot be denied or conferred as the case may be ignoring or misinterpreting the words in the Section, haunted by a supposed intention of the provision" and further it is observed that "the over all fee charged for the facilities offered as part of undergoing schooling therein does not make a student tenant as in the normal meaning of the term. There does not arise any Landlord-Tenant relationship. Consequently, hostel premises cannot be said to yield rent to justify the levy of property tax.

19. Also this Court aptly points out the decision in *President, K. Vellakulam Panchayat v. Kamaraj College of Engineering and Technology* (2009) 5 CTC 289: (2009) 8 MLJ 245, the Full Bench of this Court has held that "In exercise of powers conferred by Article 243-H of the Constitution of India, the State of Tamil Nadu has authorised the Panchayats, including the Appellant, to levy, collect and appropriate taxes, duties, tolls and fees in accordance with the procedure and subject to limits as prescribed under the Tamil Nadu Panchayats Act, 1994. Sub-section (1) of Section 171 of the Tamil Nadu Panchayats Act, mandates the Village Panchayat to levy house tax, u/s 172 it has been mandated that such house tax shall be levied on all houses in every Panchayat Village, which shall be the first charge. There is a prohibition of exemption of payment of surcharge or tax as specified u/s 168 or 171 except in accordance with Rules as may be prescribed by the State. Rule 15 of Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999, read with Sections 171, 172 and 176 of the Tamil Nadu Panchayats Act, 1994, goes to show that Rule 15 is not mandatory to grant exemption from house tax. However, it is enabling provision allowing the Village Panchayat to grant exemption to a class of buildings as specified therein, if it so chooses, etc. Also, in the aforesaid decision at page 290, it is held that the decision of the Division Bench of this Court in *Sriram Educational Trust, by Chairman v. President, Thiruvallur Taluk* (supra), has not laid down the correct law.

20. As per Rule 15(c) of the Tamil Nadu Village Panchayats (Assessments and Collection of Taxes) Rules, 1999, the following buildings are exempted from house tax:

- (i) Buildings used for educational purposes including hostels and libraries run by the Government;
- (ii) Buildings used for educational purposes including hostels and libraries run by local bodies;
- (iii) Buildings used for educational purposes including hostels and libraries run by institutions aided by the Government which do not conduct self financing unaided courses.
- (iv) Buildings used for charitable purposes of sheltering the destitutes or animals.

21. In the decision in *Aduthurai Town Panchayat represented by its Executive Officer, Thiruvudaimaruthur Taluk v. A. Jalaudeen* (2002) 3 MLJ 264, wherein it is laid down as follows:

Property tax cannot be assessed arbitrarily. The authorities must fix the fair or standard rent. Schedule I deals with the manner in which properties are classified and how rates are applicable to the respective categories are determined. Assessment of property tax not based on guideline and Rules will not sustain.

22. The essential rule of construction of any statute is that it must be appreciated

according to the plain words or language employed therein.

23. This Court on going through Section 172(3) of the Tamil Nadu Panchayat Act, 1994 which deals about the house tax, is of the considered view that the said Section of the Act does not expressly or impliedly speaks of levying of house tax or property tax in respect of the years either retrospectively or retroactively. Per contra, it only specifies that the Government shall, by notification, determine in regard to any panchayat village or any class of panchayat villages whether the house tax shall be levied every half-year or year by taking note of the matters mentioned in (a) to (d) of the said Section. Therefore, the Respondent/the President, Krishnapperi Panchayat cannot issue the impugned demand notice dated 17.8.2005 in respect of the years from 1995 to 2004 either in a retroactive manner or in retrospective action. It is also not established on the side of the Respondent before this Court that the Respondent/ the President of Krishnapperi Panchayat, has the necessary requisite powers either under the Tamil Nadu Panchayats Act, 1994 or under the Rules framed thereunder, to issue the impugned demand notice dated 17.8.2005 for the periods ranging from 1995 to 2004 claiming the property tax in respect of the Petitioner/the School at the rate of Rs. 5 per one sq.ft to an extent of 2260 sq.ft. On this simple ground alone, the demand notice dated 17.8.2005 issued by the Respondent/the President, Krishnapperi Panchayat, addressed to the Correspondent of the Petitioner/the School claiming property tax for the periods backward in question viz., from the year 1995 to 2004 is an illegal one and the same is not sustainable in the eye of law. Consequently, the writ petition succeeds. Since, the demand notice dated 17.8.2005 of the Respondent/the president, Krishnapperi Panchayat is not in conformity with Section 172(3) of the Tamil Nadu Panchayats Act, 1994, it is not necessary for this Court to deal with the other aspects of the Tamil Nadu Panchayats Act 1994 or the Rules 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 or the Rules 8, 10, 16(1) and (2) of Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999 etc.

24. In the result, the writ petition is allowed leaving the parties to bear their own costs. Resultantly, the impugned order passed by the Respondent/the President, Krishnapperi Panchayat dated 17.8.2005 is set aside for the reasons assigned by this Court in this writ petition. Consequently, the connected Miscellaneous Petition is closed. No costs.