(2013) 08 MP CK 0061

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5895 of 2011

Mittal Institute of Technology — APPELLANT

Vs

Municipal Corporation — RESPONDENT

Date of Decision : 05-08-2013

Acts Referred:
Constitution of India, 1950 — Article 226
Madhya Pradesh Municipal Corporation Act, 1956 — Section 135, 136, 136(c), 149

Citation : (2013) 08 MP CK 0061

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Gaurav Tiwari, for the Appellant; P. Bhatnagar, learned counsel, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjay Yadav, J.—Petitioner calls in question the action of respondent in raising demand towards property tax in respect of building and lands used for educational purpose including colleges, boarding houses, hostels and libraries. It is urged that despite of the exemption u/s 136(c) of the Municipal Corporation Act, 1956, the petitioner institute has been subjected to the property tax u/s 135. Placing reliance on the decision in batch of petitions W.P. No. 3881/2010 (Shri Agrawal Educational & Welfare Society vs. The Municipal Corporation, Bhopal and others) raising the plea similar to the present one, it is urged that the respondent be directed not to insist upon payment of property tax.

2. A Division Bench in Shri Agrawal Educational & Welfare Society vs. The Municipal Corporation, Bhopal and others (supra) has held:

8. A bare reading of the above referred provisions clearly establishes that property tax is one of the taxes which the Corporation must impose but the imposition of this tax is subject to the provisions of sections 135 and 136. Clause (c) of section 136 also clearly states that exemption from levy of property tax applies to all the buildings and lands or portions thereof used exclusively for

educational purposes. The only restriction is that buildings and lands should be owned by the educational institutions concerned or placed at the disposal of such educational institutions without payment of any rent. There is no express provision in the clause that exemption will not apply to private and autonomous educational institutions which are imparting professional and vocational education and while doing so such educational institutions are making profit. It is also not possible to read such an implied provision in the exemption clause. The expression used "exclusively for educational purposes" is wide enough to cover use for professional and vocational education by private and autonomous colleges. The expression "including schools" does not limit the scope of "educational purposes" in the exemption clause. It is well settled that where word "include" is used, the intention of the legislature is to make the scope of expression extensive and not restrictive. For these reasons, I have no hesitation in holding that the petitioners'' educational institutions are exempted from the imposition of property tax in respect of buildings and lands used by them exclusively for educational purposes.

9. As regards the plea taken by the Municipal Corporation, Bhopal, for the dismissal of all the petitions on the ground of availability of alternative remedy to file appeal before the District Court u/s 149 of the Act, I am of the view that provision for appeal does not take away the jurisdiction of High Court conferred under Article 226 of the Constitution. It is a matter of discretion of the High Court to interfere or not to interfere in case of such a provision. It is to be noted that, but for two petitions, all the petitions were entertained in 2008 and 2009 and returns have been filed in them. The petitions involve a common basic question whether the use of buildings and lands by educational institutions for professional and vocational education are covered under the exemption clause (c) of section 136 of the Act from levy of property tax. In these circumstances, I do not think that it will be a proper exercise of discretion to throw away the petitions because of the provision for appeal.

3. It is contended by learned counsel for the petitioner and not disputed by respondents that the order in Shri Agrawal Educational & Welfare Society has been affirmed in writ appeal.

4. In view whereof, the petition is disposed of with a direction to the respondent to consider the case of petitioner in the light of decision in Shri Agrawal Educational & Welfare Society vs. The Municipal Corporation, Bhopal and others (supra) and if found eligible to exempt the petitioner from the property tax u/s 135. In case the respondents are of the view that the petitioner cannot be exempted, then a speaking order be passed after hearing the petitioner. Let the same be done within three months from the date of communication of order. In the meanwhile, the deposit of property tax would be subject to the final outcome of the decision by the respondent. Petition is finally disposed of in above terms. No costs.

