(1996) 09 MAD CK 0078

In the Madras High Court

Case No : Writ Petition No''s. 13190 to 13194 of 1992

PSG and Sons Charities APPELLANT

Vs

City Municipal Corporation RESPONDENT

Date of Decision : 04-09-1996

Acts Referred:
Coimbatore City Municipal Corporation Act, 1981 — Section 123, 168

Citation : (1997) 1 CTC 331

Hon'ble Judges : Jayarama Chouta, J

Bench : Single Bench

Advocate : R. Muthukumarasamy, for the Appellant; P.M. Baskaran, for the Respondent

Final Decision : Allowed

Judgement

Jayarama Chouta, J.—In all these writ petitions, the petitioner is one and the same i.e. P.S.G. & Sons Charities, represented by its Chief

Executive. Coimbatore and the respondent is the City Municipal Corporation, represented by its Commissioner. Coimbatore. Since common facts

are involved and the parties are one and the same in all these writ petitions, by consent of counsel on both sides. I am disposing of all these writ

petitions by this common order.

2. The prayers in these writ petitions are to issue a writ of Certiorarified mandamus or any other appropriate writ calling for the records of the

respondent made ''in assessment in 9029, 9815, 9031, 9814 and 9030 dated 24-4-1992 respectively and quash the same and consequently,

forbear the respondents from levying or demanding property tax in respect of the properties belonging to the petitioner. Trust used for the PSG

Institute of Medical Sciences and Research and PSC Hospitals.

3. W.P. No. 13190 of 1992 relates to assessment in 9029 dated 24-4-1992 pertaining to hospital buildings. W.P. No. 13191 of 1992 relates to

Assessment No. 9815 dated 24.4.1992 pertaining to vacant land, whereas W.P. No. 13192 of 1992 is in respect of Assessment No. 9031 dated

24.4.1992 in respect of hospital building. W.P. No. 13193 of 1992 is in respect of Assessment No. 9814 dated 24.4.1992 in respect of another

vacant land and W.P. No. 13194 of 1992 pertains to Assessment No. 9815 dated 244.1992 in respect of College building.

4. The necessary facts for the disposal of these writ petitions can be gathered from the affidavit filed by the petitioner in all these writ petitions.

5. One C.R. Swaminathan. Chief Executive of the petitioner Trust has filed affidavits in support of the above writ petitions. In the said affidavit, he

has stated that the petitioner is a Trust administered under the Scheme of Administration framed in O.S. No. 135 of 1945. It had established

several educational institutions since 1926. The institutions so established by the petitioner Trust include Schools, Colleges, including that of PSG

Institute of Medical Sciences and Research and PSG Hospitals. They have been established for the purpose of providing training facilities for the

students of Medicine who are to undergo courses in the said Medical College. The PSG Hospitals is part of the said educational institution which is

being run purely on charitable basis wherein a large percentage of beds in the said hospitals was to be served free of cost. The said institution were

established with the divine objects of providing educational facilities to the students and to provide high quality medical care on charitable basis to

the public.

6. Coimbatore was a Municipality governed by the Tamil Nadu District Municipalities Act till it become a City Municipal Corporation in the year

1981 As per the provisions of the Tamil Nadu District Municipalities Act. the properties lying with the Municipal Limits of Coimbatore was liable

to pay property tax u/s 81 of the said Act. However, Section 83 of the District Municipalities Act exempted certain classes of buildings and lands

from the levy of Property Tax. This includes buildings used for educational purposes and charitable hospitals and dispensaries. Since Coimbatore

became a City Municipal Corporation in the year 1981, it was governed by the provisions of the Tamil Nadu Act 25 of 1981 as per which buildings and lands situated within the City are liable to tax in terms of Section 121 of the said Act. Unless it was exempted under the provisions of

the aforesaid Act. Section 123 of the Tamil Nadu Act 25 of 1981 provided for statutory exemptions in relation to certain classes of buildings.

Though buildings used for charitable hospitals and dispensaries are exempted from the levy of property tax. buildings used for educational

institutions have not been exempted in terms of the said Act.

7. The respondent Corporation had not levied any tax with reference to the buildings belonging to the petitioner Trust. While so, the petitioner was

asked to receive notices purporting to be u/s 168 of the Coimbatore Municipal Corporation Act levying property tax in respect of buildings used

for the Medical college and Hospitals with effect from 1.4.1984. On receipt of the said special notices, the petitioner addressed a communication

on 6.5.1992 to the respondent. Corporation bringing to the notice that the property used for housing the PSG Hospitals are entitled to exemption

u/s 123 of Coimbatore Municipal Corporation Act. He has also pointed out that the assessment made by the respondent with reference to the

buildings used for Medical College and Hospital appears to have been made at par with commercial buildings in the City which was solely

unsustainable. A reply was received from the respondent on 28.5.1992 stating that if the petitioner is aggrieved by the levy of property tax they

could challenge the same by way of appeal before the Tribunal after paying the tax in question. Following the said communication, the respondent.

Corporation has also sent demands demanding the property tax in respect of the buildings used for the Medical College and Hospitals.

8. The petitioner raised various contentions in his affidavits. The first contention was that the buildings in question used for housing the Medical

College and PSG Hospitals are entitled of statutory exemption as they would fall within the purview of Section 123 of the Coimbatore City

Municipal Corporation Act. In any event, the buildings used for PSG Hospitals would quality for statutory exemption from the levy of property tax

in terms of Section 123(2) of the aforesaid Act and consequently, the impugned action of the respondent is without jurisdiction.

9. The second contention was that the five proceedings containing five different assessments have been made by the respondent Corporation relate

to the period exceeding a period of three years and hence, in view of Section 168 of the Act. they are opposed to the said provisions Without

prejudice to the above contentions, he has also submitted that the impugned assessments are contrary to the provisions of the Act and the Rules

made thereunder. It has failed to take into consideration certain depreciations while valuing the buildings for the purpose of levy of Property Tax.

He also pointed out mat the case is one which is fit for exemption u/s 167 of the Act if not u/s 123 of the said Act.

10. These writ petitions were admitted on 1.9.1992 and Rule NISI was issued and interim stay staying all further proceedings pursuant to the

assessment of property tax made by the respondent in various assessment numbers dated 24.4.1992 pending disposal of the writ petitions, was

granted.

11. The respondent filed miscellaneous petitions for vacating the interim stay granted by this Court on various grounds. One Dr. Nirangan.

Commissioner, Coimbatore Corporation has sworn to a counter-affidavit in support of these petitions. In the said counter-affidavit, he has stated

that the petitioner is the owner of the property bearing No. 338/C Avanashi Road, Peelamedu in Coimbatore, measuring 10 acres. He has

submitted an application for permission to construct hostels for men and women in the said area. That permission was granted after getting sanction

from the Corporation and as per the said plan, building was constructed. However, the petitioner failed to give the completion report to the

Corporation. After inspection by the Commissioner on 22.4.1992, the tax was calculated taking into consideration the formula prescribed under

the Tamil Nadu Buildings (lease and Rent Control) Act and accordingly, the petitioner was served with notice. He has further pointed out that if the

petitioner is aggrieved by the assessment, it is open to him to file an appeal before the Taxation Appeals Committee and hence, the writ petitions

are not maintainable.

12. He has disputed the fact that the hospital is run on charitable basis. According to him. the petitioner is collecting rent from the occupants and as

such, they are not entitled for exemption as claimed by them. Originally, educational institutions were exempted under the provisions of the District

Municipal Act from payment of property tax. But. such exemption is not available under the Coimbatore City Municipal Corporation Act for

educational institutions. The petitioner is liable to pay property tax even for vacant land. Since the property was escaped from taxation, the

Corporation has assessed the same under the provisions of Section 168 of the City Municipal Corporation Act. He has denied the exemption for

the charitable hospitals u/s 123(1) of the Act. According to him. the assessment made by the respondent is well within their powers and it is in

accordance with the Corporation Act. The building was taxed from 1.4.1989. and the tax is payable for the period from 1.4.1989 to 30.9.1989

and the assessment having being made on 23.4.1989 will be within the time and, it is therefore incorrect to state that the demand is contrary to

Section 168 of the Act.

13. Since the hospital is collecting rent from the occupants of the rooms, the claims of the petitioner for exemption u/s 167 of the Act is not tenable.

On these grounds, the respondents has prayed this Court to dismiss the writ petitions.

14. Heard. Mr. Muthukumaraswamy, learned counsel for the petitioner and Mr. P.M. Baskaran. learned counsel on behalf of the respondent and

perused the records.

15. The main grounds of attack of the learned counsel for the petitioner are thus: According to him. the buildings in question used for housing the

medical college and PSG Hospitals for housing are entitled for statutory exemption as they would fall within the purview of Section 123 of the

Coimbatore City Municipal Corporation Act. In any event, the buildings used for PSG Hospitals would qualify for statutory exemption from the

levy of property tax in terms of Section 123(1) of the aforesaid Act. He pointed out that the hospital falls within the purview of Section 123(1) of

the Coimbatore City Municipal Corporation Act, which will be hereinafter called as the ""Act"". Section 123 (of the Act) reads as follows :

123. General exemptions from property tax- The following buildings and lands shall be exempt from the property tax -

a. places set apart for public worship and either actually so used or used for no other purposes :

b. choultries for the occupation of which no rent is charged and choultries the rent charged for the occupation of which is used exclusively for charitable purposes.

c. (Buildings used for educational purpose including hostels attached thereto and places used for the charitable purpose) of sheltering the destitute

or animals, and orphanages, homes and schools for the deaf and dumb, asylum for the aged and fallen women and such similar institutions run

purely on philanthropic lines as are approved by the council;

d. Such ancient monuments protected under the Ancient Monuments Preservation Act, 1904 (Central Act VII of 1904) and such ancient and

historical monuments declared by or under the ancient Monuments and Archaeological Sites and Remains Act. 1958 (Central Act XXIV of 1958)

to be of national importance and also such ancient monuments and archaeological sites and remains protected under the Tamil Nadu Ancient and

Historical Monuments and Archaeological Sites and Remains Act, 1966 Tamil Nadu Act (XXV of 1966) or parts thereof as are not used as

residential quarters or public office ; and

e. charitable hospitals and dispensaries but not including residential quarters attached thereto.

Rest of the things are not necessary for the purpose of this case.

16. In Sub-section (c) of Section 123 of the Act. buildings used for educational purpose including hostels attached thereto and places used for the

charitable purpose has been substituted only by Act 42 of 1994. Placing reliance on those provisions, learned counsel for the petitioner submitted

that in view of Section 123(e) of the Act. the hospital being a charitable hospital, it is exempted from paying property tax. In this connection, he has

placed reliance on a decision of a Division Bench of this Court in S.N.R. Sons Charitable Trust, Coimbatore v. The Commissioner, Coimbatore

City Municipal Corporation, Coimbatore. 1993 W.L.R. 769 and invited my attention to the following portion :

On a consideration of the provisions of the Coimbatore City Municipal Corporation Act, it is seen that property tax is leviable on annual value and

the annual rent, on the basis of letting from month to month or year to year. The exemption is made available with reference to the levy of property

tax on the basis of annual value determined on gross annual rent either from month to month or from year to year. In other words, the entire

scheme for the levy of property tax is based on rent, which gross annual rent based either on a monthly tenancy or yearly tenancy. The rent

contemplated for purpose of ascertaining the annual value and also for levying the property tax cannot be different for purposes of denial of

exemption as per Section 123(e) read with the proviso. A consideration of the scope of exemption from payment of property tax with reference to

buildings in other clause, would also indicate that in certain cases, the building or the property cannot at all be let out for rent and that perhaps is the

reason why they have not been included in the proviso excepting cases falling under Clauses (a), (b) and (c).

In this case, the amounts paid by the patients, who used the hospital as well as the range of services provided by it. cannot be regarded as ''rent''

paid by them in the narrower sense in which it is intended under the provisions referred to.

The payments made by the patients to the hospital by way of hospital charges cannot be equated to ''rent'' as contemplated under the provisions of

the Act and the denial of the benefit of exemption to the appellant, on that score, cannot be sustained. When it is not disputed that the hospital run

by the appellant was entitled to the benefit of exemption u/s 123(e) of the Act, unaffected by the Proviso, till 31.1.1982, it is not known how the

appellant could be denied the benefit of such exemption from 1.4.1982. There is no indication in the impugned notice that the character of the

payments made by the patients taking treatment in the hospital underwent a change between 31.3.1982 and 1.4.1982, and in this view also, the

refusal of exemption prayed for by the appellant cannot be upheld.

17. Placing reliance on the said decision, learned counsel submitted that WP No. 13190 of 1992 is entitled to be allowed.

18. The next submission of the learned counsel for the petitioner is that the impugned assessments made by the respondent/Corporation in respect

of the properties owned by the petitioner are opposed to Section 168 of the Act. He pointed out that the Commissioner may at any time within

three years from the date on which the petitioner should have been assessed should have issued notice and in the present case, the assessment

from the IInd half of 1989-90 will be within three years and the assessment prior to that will be barred. He took me to Section 168 of the Act

which reads as follows :-

Power to assess in case of escape from assessment. Notwithstanding anything to the contrary contained in this Act or the rules made thereunder,

if for any reason any person liable to pay any of the taxes or fees leviable under this Chapter has escaped assessment in any half-year or year or

has been assessed in any half-year or year at a rate lower than the rate at which he is assessable, or in the case of property tax has not been duly

assessed in any half-year or year consequent on the building or land concerned having escaped proper determination of its annual value, the

Commissioner may, at any time within three years from the date on which such person should have been assessed, serve on such person a notice

assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service, and the provisions of this Act

and the rules made thereunder shall so far as may be apply as if the assessment was made in the half year or year to which the tax or fee relates"".

19. His other contention was that the respondent Corporation has charged an exorbitant tax without considering certain depreciations while valuing

the buildings for the purpose of levy of property tax.

20. His last contention was that the petitioner should be given an opportunity to make representation before the Corporation and the Government

for exemption from the payment of property tax in respect of the above mentioned properties as provided u/s 167 of the Act. Section 167 of the

Act reads as follows:-

Power to exempt from taxes : With the sanction of the Government the council may exempt any person or class of persons wholly or in part from

the payment of any tax. But, nothing in this section shall be deemed to authorise the exemption of any person solely on the ground that he is a

councillor.

21. In this connection, he has invited my attention to the Statement of Objects and reasons while introducing Act 42 of 1994 which came into force

on 1.4.1994:

Many representations were received from the management of private schools and colleges in corporation and municipal areas, to exempt them

from the payment of property tax. Their main contentions are that the institutions are being run on non-commercial basis and that they are

maintained only through the fees collected from the students. The Government after careful consideration of the said representations, have decided

to exempt the educational institutions from the payment of property tax. It has also been decided that such exemption should be with effect from

the 18th day of October. 1990, in respect of Municipalities and with effect from 1st day of April, 1994. in respect of Municipal Corporations. To

give effect to the above decisions, it is proposed to amend the Acts relating to the Municipal Corporations and Municipalities suitably.

2. The Bill seeks to give effect to the above decisions.

22. On the other hand, learned counsel for the respondent Corporation countering all the above contentions of the learned counsel submitted that

the petitioner without exhausting the remedy by filing appeals before the Taxation Appeals Committee cannot maintain these writ petitions. He also

pointed out that the assessments made are proper, legal and in accordance with rules. He disputed that the hospital run by the petitioner is a

charitable one and whether it is charitable or not, this Court cannot go into those questions in these writ petitions. According to the learned counsel,

no exemption is available under the Act for educational institutions, charitable hospitals, dispensaries, collecting rent from the occupants are liable

to pay property tax. Sine the property tax escaped from taxation, the Corporation has assumed the same under the provisions of Section 168 of

the Act. He further pointed out that since the petitioner has not issued notice as per Sections 128 and 129 of the Act regarding construction or

reconstruction of building, he is not entitled to have the benefit of Section 168 of the Act. As per the provisions of Section 122 and 123 of the Act,

property tax has been assessed and there is no illegality and hence, he asked this Court to dismiss these writ petitions.

23. Now let me examine the rival contentions. This Court in the decision in S.N.R. Sons Charitable Trust, Coimbatore v. The Commissioner,

Coimbatore City Municipal Corporation, Coimbatore. 1993 W.L.R. 769, has clearly held that payments made by the patients to the hospital by

way of hospital charges cannot be equated to ''rent'' as contemplated under the provisions of the Act and the denial of the benefit of exemption to

the petitioner on that score cannot be sustainable. Hence. I hold that the petitioner is exempted from paying the tax and the benefit of Section

123(e) of the Act should be extended to the petitioner as far as the hospital is concerned and hence, WP No. 13190 of 1992 is allowed.

24. Now coming to the other contention of the learned counsel for the petitioner that the Commissioner can issue notice within three years from the

date on which such person should have been assessed and beyond that the Commissioner has no power as found in Section 168 of the Act, there

is considerable force. There is no dispute that in all these case notices were issued on 24.4.1992 and the notices as well as demand show that the

Commissioner has taken action u/s 168 of the Act on the basis of escaped assessment and further, there is no reference to Sections 128 and 129

of the Act as contended by the learned counsel for the respondent in Section 168 of the Act. Under these circumstances, I am of the opinion that

the Commissioner has got power to demand the tax for a period of three years and beyond that, it will be barred. Hence, in all these writ petitions,

the tax claimed from the second half of 1989-90 will be within time and the tax claimed before that period is barred by time. Accordingly, I hold

that the tax claimed before the second half of 1989-90 has to be set aside.

25. Now turning to the submission of the learned counsel for the petitioner, that the petitioner should be given an opportunity to make

representation in this regard to the respondent/Corporation and the Government to exempt them from the payment of property tax in respect of the

properties which are the subject matters in these writ petitions for exemption as per Section 167 of the Act, it will be open to the petitioner to

make such a representation.

26. Hence, for the reasons stated above. I allow WP No. 13190 of 1992 and quash the assessment in 9029 dated 24.4.1992 issued by the

respondent. I set aside the tax claimed by the respondent for the period earlier to second half of 1989-90 in the other writ petitions viz., W.P.

Nos. 13191 to 13194 of 1992. Liberty is given to the petitioner to move the respondent/Corporation and the Government to claim exemption u/s

167 of the Act. However, there will be no order as to costs.