(2011) 03 AHC CK 0048

In the Allahabad High Court

Case No : Writ Tax No. 314 of 2011

Saraswati Shishu Mandir APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 07-03-2011

Acts Referred:

Uttar Pradesh Municipal Corporation Act, 1959 — Section 172, 172(1), 173, 173(1), 177

Citation : (2011) 3 ADJ 742 : (2011) 8 RCR(Civil) 2091

Hon'ble Judges : F.I. Rebello, C.J;Prakash Krishna, J

Bench : Division Bench

Judgement

1. With the consent of parties, heard forthwith.

2. The Petitioner has approached this Court challenging the bills/notice (Annex. 1 to 3) issued by Respondents-Nagar Nigam.

3. As the controversy raised in this petition involves interpretation of Section 173 read with Section 177 of the Uttar Pradesh Municipal Corporations Act, 1959 (hereinafter referred to as the ''Act'') and as the Petitioner has raised a question of law, we propose to decide the same.

4. Submission on behalf of the Petitioner is that the Petitioner is a charitable institution and running educational institutions, namely, Saraswati Shishu Mandir and Sarawati Balika Vidyalaya. These institutions are in district Bareilly. The contention of the Petitioner is that considering Section 177 of the Act, Respondents cannot charge house tax, water tax and sewerage tax from the Petitioner.

5. Section 177 of the Act is relevant for deciding the controversy. The relevant portion of Section 177 of the Act reads as under:

177. General tax on what premises to be levied.- The general tax shall be levied in respect of all buildings and lands in the City except:

(a)....

(c) building solely used as schools and intermediate colleges whether aided by the State Government or not, fields, farms and gardens of Government aided institutes of research and development, playgrounds of Government aided or unaided recognized education institutions and sports stadium.

Also relevant is Section 173 of the Act, which reads as under:

173. Property taxes leviable.- (1) For the purposes of Sub-section (1) of Section 172 property taxes shall comprise the following taxes which shall, subject to the exceptions, limitations and conditions hereinafter provided, be levied on buildings and lands in the City:

(a) a general tax which may be levied, if the Corporation so determines, on a graduated scale;

(b) a water tax leviable in areas where water is supplied by the Corporation;

(c) drainage tax leviable in areas provided with sewer system by the Corporation;

(d) a conservancy tax in areas in which the Corporation undertakes the collection, removal and disposal of excrementitious and polluted matter from privies, urinals and cesspools.

(2) Save as otherwise expressly provided in this Act or Rules made thereunder, these taxes shall be levied on the annual value of buildings or land as the case may be:

Provided that the aggregate of the property taxes shall in no case be less that 22 percent and not more than 32 percent of the annual value of the building or land or both assessed to such taxes, so however, that the general tax shall not be less than 10 percent and not more than 15 percent, the water tax shall not be less than 7.5 percent and not more that 12.5 per cent, the drainage tax shall not be less than 2.5 percent and not more than 5 percent and the conservancy tax shall not be more than 2 percent of the annual value.

6. A perusal, therefore, of the two Sections will make it clear that what Section 177 of the Act exempts is the general tax which falls within Sub-section (c) in terms Section 173(1) (a) of the Act. Section 173(1) of the Act sets out the various kind of property taxes which can be levied in terms of Section 172 of the Act, which include general tax, water tax, drainage tax and conservancy tax. Thus, on a literal and harmonious interpretation of the two Sections, the Petitioner, at the highest, would be entitled to exemption from general tax, if their case falls within Section 177(c) of the Act. We, therefore, hold that the Petitioner if, on facts, shows that the premises used by it is a building solely used for school and/or intermediate college, then it would be entitled for exemption from general tax.

7. In the light of that, it will be open to the Petitioner to file a representation

before the Respondent No. 3 raising its objections against the bills and if the representation is filed, the Respondent No. 3 to decide the same within four weeks from date of production of an authenticated copy of this order before him and if the Petitioner''s objection is allowed, then to amend the bills accordingly.

8. With the above observations, the petition is disposed of.

