(2011) 08 MAD CK 0505

In the Madras High Court

Case No : Writ Petition (MD) No. 3381 of 2008 and M.P. (MD) No. 1 of 2008

The Principal Sarada Krishna Homeopathic Medical College — APPELLANT

Vs

The District Collector, The Executive Officer and The Panchayat President, Kulasekaram Town Panchayt — RESPONDENT

Date of Decision : 18-08-2011

Acts Referred:
Tamil Nadu District Municipalities Act, 1920 — Section 81, 83, 83(1)
Tamil Nadu District Municipalities Act, 1992 — Section 83(1)

Citation : (2011) 08 MAD CK 0505

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : Isaac Mohanlal, for the Appellant; D. Muruganandam, A.G.P. for 1st Respondent and Vijay Kumar, For 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The Petitioner prays for issuance of a writ, in the nature of certiorari, for quashing the demand notice issued by the 2nd Respondent, demanding property tax, from the Petitioner for the college building, at Kulasekaram, Kanyakumari District.

2. The Petitioner is the Principal of Sarada Krishna Homeopathic Medical College, Kulasekaram, which is run by the Public Charitable Trust, having Registration No. 132/97. The object of the Trust is to provide modern educational avenues to the Malayalam linguistic minority in Kanyakumari District of Tamil Nadu.

3. The college offers 5-1/2 year Degree Course, in Homeopathic Medicine (BHMS), i.e., 4-1/2 years professional + one year Internship Training. The College is also running a 60 bedded Homeopathic Hospital with all infrastructures for the purpose of Internship Training to students.

4. The Hospital is exclusively used for educational and charitable purpose.

5. The building of the college falls within the jurisdiction of the Respondent No. 2,

which is a Town Panchayat, therefore, governed by the Tamil Nadu District Municipalities Act 1920. Section 81 of the Tamil Nadu District Municipalities Act 1920, gives power to Municipal Counsil/Town Panchayat to determine the property tax on the building/land falling within the jurisdiction. In exercise of power, u/s 81 of the Tamil Nadu District Municipalities Act 1920, the property tax has been imposed by the Respondent No. 2 and consequently, the Petitioner was ordered to pay the tax, vide, impugned demand notice.

6. The Petitioner has challenged the impugned demand notice, of imposing property tax, by invoking the provision of 83 of the Tamil Nadu District Municipalities Act, 1920, which reads as under:

Section 83, General Exemptions:

(1) The following buildings are lands shall be exempt from the propertytax;

(a) ...

(b) ...

(c) buildings used for educational purpose including hostels attached thereto, public buildings and places used for the charitable purpose and places used for the charitable purpose of sheltering the destituteoranimals,andlibrariesandplaygroundswhichareopentothe public;

(d) ...

(e) ...

7. The contention of the Learned Counsel for the Petitioner, is that in view of Section 83(1)(c) of the Act, the Petitioner is exempted from property tax, therefore, the demand raised is without jurisdiction, being in violation of the statute.

8. The Learned Counsel for the Respondents opposed the writ petition, by contending that the Petitioner has not approached the Town Panchayat for exemption u/s 83 of the Tamil Nadu District Municipalities Act 1920, therefore, is not entitled to maintain this writ petition.

9. The Learned Counsel for the Respondents also contends that for want of writ of demand, the writ of mandamus is not maintainable.

10. On consideration, I find force in the contention raised by the Learned Counsel for the Petitioner.

11. It is not writ, in the nature of mandamus, the Petitioner in-fact challenged the demand notice, and the prayer made is, in the nature of writ of certiorari, for quashing the demand notice of tax, being in violation of Section 83(1)(c) of the Tamil Nadu District Municipalities Act 1920.

12. The reading of the demand notice shows that it is addressed to the Medical

College, it was not open to the Town Panchayat, to impose property tax, in violation of the provision of the Act.

13. The impugned demand notice does not make any distinction regarding the property falling u/s 83(1)(c) of the Act, and other property, as contended by the Learned Counsel at time of arguments, so there is no application of mind. The demand notice also does not show that the building was not used for educational purposes or was being used for purpose other than the charitable trust. The impugned demand notices, therefore, being in violation of statutory provision of law, cannot be sustained in law.

14. Consequently, the writ petition is allowed. The impugned demand notices are ordered to be quashed.

15. It shall be open to the Town Panchayat, to assess the tax if any part of the building does not fall u/s 83(1)(c) of the Tamil Nadu District Municipalities Act 1992.

16. Connected Miscellaneous Petitions is closed. No costs.

