

(1984) 12 MAD CK 0005
In the Madras High Court
Case No : W.A. No. 220 of 1978

T.M. Gopalakrishnakone Trust

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 10-12-1984

Acts Referred:

Tamil Nadu Urban Land Tax Act, 1966 — Section 27, 29, 29(h), 29(k)

Citation : (1984) 12 MAD CK 0005

Hon'ble Judges : Ratnam, J;Ramanujam, J

Bench : Division Bench

Advocate : T.S. Subramaniam and Suryanarayana Rao, for the Appellant;

Judgement

Ramanujam, J.—This writ appeal is directed against the judgment of Mohan, J. in W.P. 1191 of 1978. In the said writ petition, the appellant

herein which claims to be an educational trust by name K.M. Gopalakrishna Kone Trust, Madurai, prayed for the issue of a writ of certiorari to

quash the order of the Government, dated 27th March, 1978 refusing to grant exemption to the trust from payment of Urban Land Tax. The

appellant, earlier claimed exemption under S. 29 of the Tamil Nadu Urban Land Tax Act, 1966 in respect of Urban lands owned by the trust

bearing S. Nos. VI and VII, T.S. 20/4, 16/1, 60 and 52 in all measuring 25 grounds and 2366 sq. ft. The said application having been rejected by

the Government, the appellant filed an earlier writ petition, T.M. Gopalakrishna Kone Trust Madurai v. The Secretary to Government Revenue

Department Madras W.P. 824 of 1976 questioning the order of the Government declining to grant exemption sought for by the appellant. While

disposing of that writ petition Mohan, J. directed the appellant to file a fresh application for exemption within three months from 22nd March,

1977; and the Government to consider such a petition in the light of the amended provisions of the Act and also in the light of G.O.Ms. No. 2625,

dated 27th December, 1976. In pursuance of the said direction given by the learned single Judge in the said petition, the appellant filed a fresh

application purporting to be one under S. 29 of the Act mainly contending that the lands and buildings owned by it are eligible for exemption under

S. 29(k) of the Act in view of the fact, (1) that the properties are set apart exclusively for the school, college and other religious and charitable

purposes and the entire income is solely utilised to carry out the objects of the trust, and (2) that the trust, in any event, is entitled to exemption in

respect of the lands and buildings in question in view of G.O.Ms. No. 1947, Revenue, dated 7th September, 1976. In respect of the request for

exemption made by the appellant in the said petition, the appellant was asked furnish further information, documents and other details required by

the Government. The appellant furnished all the relevant information, and documents called for by the Government. However, the Government by

its letter, dated 27th March, 1978 passed the following order:

Taking into account the profit earned by the Cinema theatre under the control of the Trust, the accounts of the Trust actually closed with net

surplus every year. Hence, the trust is in an affluent position to pay the urban land tax without undue hardship. Hence, the Government see no case

for granting exemption to the Trust from the payment of urban land tax. The petition for grant of exemption is accordingly rejected.

Thus, the reason given by the Government for rejecting the appellant's request for exemption from payment of urban land tax is that the trust is in

an affluent position to pay the urban land tax without undue hardship. Aggrieved against the said order, dated 27th March, 1978, the appellant filed

the second writ petition in T.N. Gopalakrishna Kone Trust, Madurai v. The Secretary to Government, Revenue Department Madras W.P. No.

1191 of 1978 contending that for considering the question of exemption, the affluent condition of the trust is not a relevant criterion that, therefore,

the Government, in passing the impugned order, should be taken to have considered extraneous matters and that the rejection of the request for

exemption on such extraneous or irrelevant consideration cannot be legally justified. Mohan, J. while rejecting the second writ petition held that

under S. 29 of the Act, the appellant has no right for exemption and that the Government having found on available materials that the trust is in an affluent position, the court cannot interfere and correct the factual errors under writ jurisdiction. The view taken by Mohan, J. has been questioned in this writ appeal.

2. As already stated, in this case the exemption sought for under S. 29 of the Act by the appellant has been rejected only on the ground that the trust is in an affluent position and it can pay the Urban Land tax without any undue hardship. The question is whether the reason given by the Government in the impugned order for declining to grant the exemption under S. 29 could be taken to be relevant or germane. We can straightway say that the ability to pay or the solvency of the party is not a material for considering the question of exemption under S. 29 of the Act. S. 29 of the Act does not proceed on the basis that exemption could be given only in cases where the owner of the land is not in a position to pay the urban land tax or if his financial status is unsound. On the other hand. S. 29(h) under which the appellant trust sought exemption before its amendment was as follows:½

Nothing in this Act shall apply to½

. . .

(h) any urban land on which any building used for purposes of schools, colleges or universities has been constructed and any urban land appurtenant to such buildings and any urban land used for public parks, public libraries, public museums, or used as play grounds attached to schools, colleges or universities.

That provision does not restrict the powers of exemption only in cases where the trust is not in an affluent position to pay the urban land tax. Under the provision the test is to see whether the land is an urban land on which any building used for purposes of schools, colleges or universities has been constructed and any urban land appurtenant to such building and any urban land used for public parks, public libraries, public museums, or used as play grounds attached to schools, colleges or universities. The same provision, after its amendment, is as follows:½

Nothing in this Act shall apply to½

. . .

(h) any urban land used by schools, colleges or universities for purposes directly connected with education, but not including any urban land owned

by such educational institutions and½

(i) which is vacant, or

(ii) in which buildings from which income is derived have been constructed.

Explanation I: For the purposes of this clause, schools or colleges shall mean only such schools or colleges which are educational institutions

recognised either by the Government or by any university, as the case may be.

Explanation II: For the removal of doubts, it is hereby declared that the urban land on which schools, colleges or universities or staff quarters or

hostels or other buildings used for the welfare of the students, have been constructed, or used as play grounds attached to such schools, colleges

or universities, shall be deemed to be urban land used for the purposes directly connected with education.

Even the amended provision does not contemplate the exemption being granted there under only if the trust is not affluent. The question of

affluence appears to be foreign to the said provision. The amended provision also contemplates the exemption being given to any urban land used

for schools, colleges or universities for the purposes directly connected with education, but it excludes any urban land owned by an educational

institution which is vacant or in which buildings from which income is derived have been constructed. Thus the provision in S. 29(h) both before

and after its amendment, does not contemplate the financial condition or the paying capacity of the trust as a relevant factor for considering the

question of exemption. Therefore, we are not in a position to uphold the impugned order of the Government holding that since the trust is in affluent

circumstances, it is not entitled to exemption. Even in the first writ petition, the appellant relied on G.O.Ms. No. 2625, dated 27th December 1976

in support of its claim for exemption. It is not in dispute that, the said Government Order dealt with the various criteria on the basis of which the

exemption under S. 27 could be granted. Sub-paragraph (vi) of paragraph 3 of the said Government Order refers to an earlier Government Order

in G.O.Ms. No. 1947 Revenue, dated 17th September, 1976 under which the Government has directed that total exemption from payment of

urban land tax be given to all educational, religious charitable and philanthropic institutions in respect of vacant land and land on which buildings have been constructed from which the institutions derive income which is being used solely for their objectives and purposes with effect from 1st July, 1975, that exemption from payment of urban land tax will Continue so long as the urban land is specifically used for the purposes of the institution concerned, that if there is violation in the use of, or diversion of, the income derived from the urban land, the full urban land tax is to be levied as provided for in the Act, and that if the institution concerned disposes of urban land by sale, gift, etc., it has to pay the Government the entire amount of urban land tax payable upto the date of such alienation. In G.O. Ms. No. 2625 Revenue, dated 27th December, 1976, the Government has directed that the concession given in the earlier G.O. dated 17th September, 1976 will be given retrospective effect from the faslis from which such exemption has been prayed for by the respective institution on a specific application made to Government. Under the provisions of G.O. Ms. No. 1947, Revenue dated 17th September, 1976 and G.O.Ms. No. 2625 Revenue, dated 27th December, 1976, so long as the income from the lands and buildings owned by any trust is spent exclusively for the purposes of the trust, the trust is entitled to get exemption from the Government. As already stated, in this case, the Government has not considered the claim of the appellant for exemption in respect of the lands and buildings owned by the trust in the light of the Government Orders referred to above, nor its application was considered strictly under the provisions of S. 29. The appellant's application for exemption has been rejected on the ground that the Trust is an affluent one, when the question of affluence is foreign to a claim for exemption either under S. 29 or under S. 27. In view of the fact that the order of the Government impugned in these proceedings proceeds to consider the application of the appellant on extraneous matters, the order, could not be sustained and, therefore, it has to be quashed and the matter remitted to the Government with a direction to the first respondent to consider the appellant's claim for exemption afresh in the light of the Government Orders referred to above and the observations made in this judgment. The appeal is ordered accordingly. There will be no order as to costs.