

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2010

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.10441 of 2009

Anjalai Ammal Mahalingam
Engineering College,
Rep. By its Managing Trustee,
Mr.Justice A.Ramamurthy
Kovilvanni,
Thiruvarur District - 614 403.

... Petitioner

Vs.

- 1.Secretary to the Government,
Rural Development and
Panchayat Raj Department,
Secretariat, Chennai - 600 009.
- 2.The Director of Rural Development,
Chennai - 600 009.
- 3.The Collector,
Tiruvarur District.
- 4.The Assistant Director (Panchayats)
Collectorate,
Tiruvarur District.
- 5.The Block Development Officer,
Village Panchayat,
Needamangalam,
Tiruvarur District.
- 6.The President,
Panchayat Board,
Kovilvanni,
Tiruvarur - 614 403.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified mandamus, calling for the records of the 6th respondent relating to the notice of demand of property tax for the year 2006-2007 dated 15.02.07 and his subsequent letter dated 25.10.08 and the records of the 4th respondent in Na.Ka.No.705/08/A5/U.E. dated 5.2.2009 and quash the same and consequently direct the respondents to refund

the amount of Rs.1,49,393/- paid by the petitioner institution on 28.6.07 towards the demand for the property tax for 2006-2007.

For Petitioner : Mrs.Chitra Sampath

For Respondents : Mr.P.S.Raman, Advocate General
Assisted by
Mr.M.Dhandapani, Spl.G.P.
For R1 to R4
Mr.Viswanathan for R5
R6 - No appearance

O R D E R

This writ petition came to be posted before this Court on being specially ordered by the Hon'ble Chief Justice vide order dated 21.07.2010.

2. Heard the learned counsel for the petitioner and Mr.P.S.Raman, learned Advocate General assisted by Mr.M.Dhandapani, learned Special Government Pleader for the respondents 1 to 4 and Mr.V.Viswanathan, learned counsel for the 5th respondent.

3. The petitioner is an Engineering College run by a Trust and the present Managing Trustee is a retired Judge of this Court. The Petitioner College is situated under the 6th respondent Panchayat viz., Kovilvenni. The challenge made in this writ petition is against the notice of demand made by the Panchayat for the property tax for the year 2006-2007. It seeks for setting aside the demand notice dated 05.02.2009 and for a direction to the respondents to refund the amount of Rs.1,49,393/- paid by the petitioner institution on 28.06.07 for the year 2006-2007.

4. The 6th respondent Panchayat demanded tax in terms of Section 172 of the Tamil Nadu Panchayat Act read with the Rules made under Section 242 of the Panchayat Act known as the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999. The petitioner College building was taxed at the rate of 0.50 paise per sq.ft. The petitioner had also paid the amounts for the year 2006-07. When they sought for refund of the said amount, the Panchayat informed the petitioner that such a refund is not permissible and the amounts relating to library cess had already been credited to the Government account. However, basing upon the introduction of the Government Order in G.O.Ms.No.38 Rural Development and Panchayat Raj dated 05.03.2008 by making amendments to Rule 15(c) and on the interpretation made by this Court in Kamalakshi Pandiyurangan College of Pharmacy, rep. By its Secretary and Correspondent, R.Parimala Chandran v. The President, Ayyampalayam Village Panchayat reported in 2008 (4) CTC 715, they were inspired to file this writ petition.

5. Mrs.Chitra Sampath, the learned counsel for the petitioner contended that the amendment which has been brought subsequent to the judgment of the Division Bench in Sriram

Educational Trust, represented by its Chairman v. The President, 89, Perumalpattu Panchayat Union, Thiruvallur Taluk and District reported in 2008 (1) CTC 449 is only prospective as can be seen by the letter written by the Special Commissioner and Secretary to Government dated 25.03.2008. Hence they are liable to pay tax only from that date and whatever tax they had paid earlier has to be refunded. It must be noted that the letter written by the Special Commissioner dated 25.03.2008 is pursuant to the judgment of the Division Bench in Sriram Educational Trust's case (cited supra). Secondly, the taxing power of the Panchayat is referable under Section 172 of the Tamil Nadu Panchayat Act. If the petitioner college has to pay property tax (house tax) the same is covered only by the Rules which stood even before the date of the Amendment.

6. Mrs.Chitra Sampath, learned counsel placed reliance upon the judgment of this Court in Kamalakshi Pandurangan College of Pharmacy's case (cited supra), which was rendered after the decision of the Division Bench. Reliance was placed upon paragraphs 26 and 27, which is as follows:

"26.In my considered opinion, this is the only interpretation which could advance the object of the Act. The object of exemption is to exempt the buildings which are run by the Government, local bodies, run on Government aid and public buildings used for certain purposes. Though, the conjunction "and" found between words 'hostels' and 'libraries' in the old Rule 15(c) was interpreted by the Division Bench as a "disjunctive", now in view of the third proviso added to the newly introduced Rule 15(c), the said word "and" cannot be interpreted as a disjunctive and the same should be interpreted as "conjunctive". So, to put it in nutshell, as per the present Rule 15(c), the following buildings alone are exempted from house tax:-

(i)Buildings used for educational purposes including hostels and libraries run by the Government;

(ii)Buildings used for educational purposes including hostels and libraries run by local bodies;

(iii)Buildings used for educational purposes including hostels and libraries run by institutions aided by the Government which do not conduct self financing unaided courses.

(iv)Buildings used for charitable purposes of sheltering the destitutes or animals.

27.In this case, since the petitioners' Institutions are not aided institutions and they are conducting self financing unaided courses,

though the buildings are used for educational purposes, they do not fall under any of the categories enumerated in Rule 15(c) of the present rule and so, they cannot claim exemption from house tax. I hold that the buildings used by the petitioners' Institutions are liable for house tax and thus, the impugned notices do not require any interference at the hands of this Court."

(Emphasis added)

7. Therefore the learned counsel submitted that the amendment can only be prospective and there was no necessity to pay any amount prior to the Government order amending the Rule. This argument overlooks the fact that the order was made by the Government prior to the Full Bench decision of this Court presided by S.J.Mukhopadhyaya, J. (as he then was) in the case of The President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District v. Kamaraj College of Engineering and Technology, Managing Board, rep. By its Secretary, S.P.G.C.Srimurugan reported in 2009 (5) CTC 289. The Full Bench considered the constitutional power of the Panchayat to levy tax. In paragraphs 13, 17 and 18, it was held as follows:

"13). From the aforesaid constitutional provisions and State enactments, while it will be evident that Parliament, with a view to empower the Village Panchayat to have its own financial resources, inserted Article 243-H empowering the State Government to legislate authorizing a Panchayat to levy and collect appropriate taxes, duties, tolls and fees in accordance with the procedure prescribed by the State; the State of Tamil Nadu, in terms with Article 243-H empowered the Village Panchayat to levy house tax. Under sub-section (1) of Section 171, the Village Panchayats have been mandated to levy such house tax on all houses in every Panchayat Village. Under Section 176 while it has been mandated not to grant any exemption from payment of surcharge or tax specified under Section 168 or 171, the Panchayats have been empowered to grant such exemption only in accordance with the Rules as prescribed by the State. Therefore, it is the Panchayat which has the authority to decide whether it will grant exemption or not and if it so decides to grant exemption from payment of tax under Section 171 it requires to follow the procedure as prescribed under the rules. In view of the aforesaid provision of Article 243-H and Section 171(1) r/w Sections 172 and 176, the State Government cannot force the Panchayat to grant exemption of tax to one or other category of person or building

17). We have already noticed that Rule 15 is a subordinate legislation which cannot override the substantive provisions of the Act such as Sections 171(1), 172 and 176. Section 171(1) mandates the Village Panchayat to levy house tax on all the houses of the Village Panchayat. The mandate is also clear from Section 172, wherein the basis of levy of house tax has been prescribed. There is a prohibition from grant of exemption of surcharge or tax under Section 176 except in accordance with the rules. Therefore, if Rule 15 is read with the aforesaid Sections 171, 172 and 176, it is to be held that under Rule 15 it is not mandatory to grant exemption from house tax, but is an enabling provision allowing the Village Panchayat to grant exemption to a class of buildings as specified therein, if it so chooses. Rule 15 cannot be held to be mandatory to exempt class of buildings from payment of house tax, which otherwise will run counter to Sections 171, 172 and 176 of the Act and may render Rule 15 ultra vires. Therefore, the word "shall" used in Rule 15 has to be read as "may" to give effect to the said rule of exemption.

18). We accordingly, hold that the exemption prescribed under Rule 15 is not mandatory and is an enabling provision empowering the Village Panchayat or Panchayat Union to grant exemption to a class of buildings as specified therein. The corollary is that it is open for the Village Panchayat or Panchayat Union not to grant such exemption in favour of one or other class of such buildings. The Court cannot force the Panchayat to exercise its discretionary power to grant exemption to one or other class of buildings in absence of any decision taken by the Village Panchayat or Panchayat Union to grant such exemption. Once a Village Panchayat or Panchayat Union takes a decision to grant exemption in favour of one or other class of buildings, only in that case no discrimination can be made between two similarly situated persons and no order can be passed in an arbitrary manner."

(Emphasis added)

8. The order passed by the learned single Judge in Kamalakshi Pandurangan College of Pharmacy's case (cited supra), did not have the benefit of judgment of the Full Bench. Subsequent to the Judgment of the Full Bench in The President, K.Vellakulam Panchayat, Kallikudi Chatram, Madurai District's case (cited

supra), the matter will have to be looked into from a different angle. After the pronouncement of the Full Bench decision, it should be considered that self-financing educational institutions have always been subject to payment of house tax as determined by the Village Panchayat empowered under Section 172 of the Act. As long as the petitioner college do not enjoy any exemption either before the Government Order or subsequent to the Government Order, they cannot in the guise of the said Government Order once again argue that the taxation is only prospective based on the Government's interpretation and that too on a letter sent by the Special Commissioner. Hence any argument to the contrary is liable to be rejected. Since the power of the Village Panchayat to subject all buildings in a panchayat to house tax emanates from Section 172 and there is a valid demand which was also complied with by the petitioner college, the present contention is misconceived and bereft of merits. In respect of self-financing educational institutions, they were always subjected to house tax as there being no exception granted to them at any point of time. The present claim based upon the Division Bench Judgment referred to above does not survive anymore in view of the Full Bench judgment referred to above.

9. In the light of the above, the writ petition stands dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

svki

To

- 1.Secretary to the Government,
Rural Development and
Panchayat Raj Department,
Secretariat, Chennai - 600 009.
- 2.The Director of Rural Development,
Chennai - 600 009.
- 3.The Collector,
Tiruvarur District.
- 4.The Assistant Director (Panchayats)
Collectorate, Tiruvarur District.
- 5.The Block Development Officer,
Village Panchayat,
Needamangalam,
Tiruvarur District.

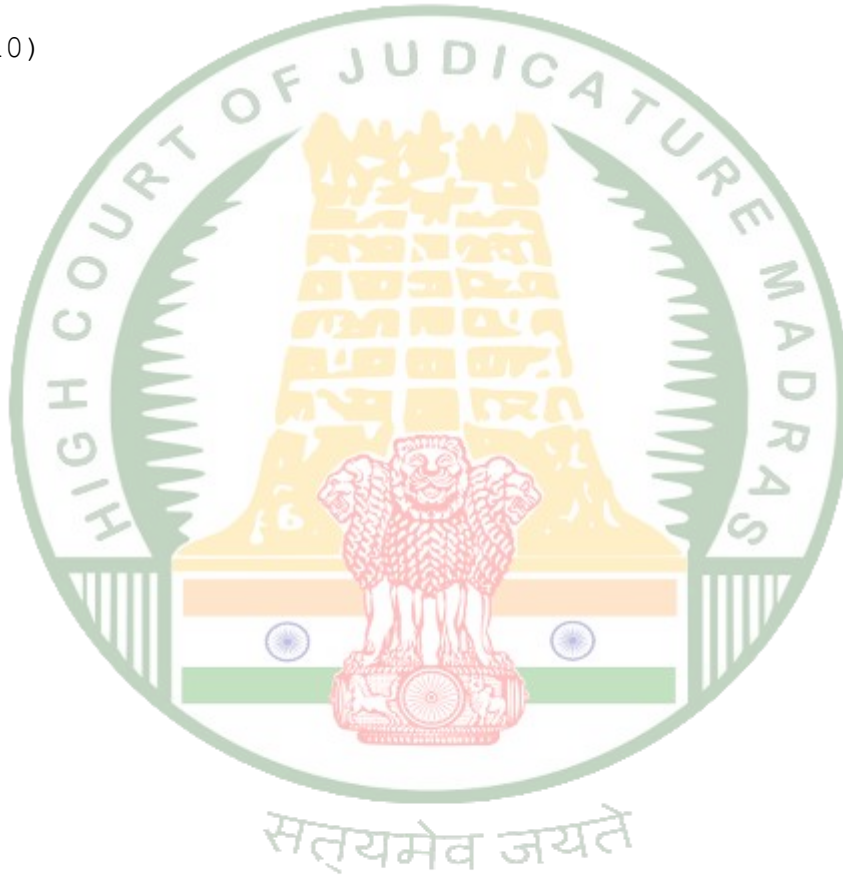
6.The President,
Panchayat Board,
Kovilvenni, Tiruvarur - 614 403.

1 cc To Mr.Chitra Sampath, Advocate, SR.55440

1 cc To The Government Pleader, SR.56036

order in
W.P.No.10441 of 2009

GG (CO)
RH (10.8.10)



WEB COPY