

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2010

CORAM

THE HONOURABLE MR.JUSTICE K.CHANDRU

W.P.No.26999 of 2008,  
W.P.No.10999 of 2003,  
W.P.Nos.37872 and 41346 of 2005,  
W.P.No.9753 of 2006, W.P.No.25350 of 2007,  
W.P.Nos.631,4259, 4647, 4653, 4663, 4664,  
5304,5633,5757, 6398, 6399, 8719, 16399,  
21054, 21915 of 2009 and  
W.P.No.2417 of 2010 and  
Connected Miscellaneous Petitions

Kaamadhenu Arts and Science College,  
Rep. By its Correspondent,  
Kamadhenu Nagar, D.G.Pudur Post,  
Komarapalayam Village Panchayat,  
Sathyamangalam Taluk, Erode District. ... Petitioner in  
W.P.26999/08

Indo-American College  
run by its the Abboy Trust  
rep.by its Trustee  
Mr.A.Radhakrishnan, Cheyyar  
Tiruvannamalai District ..Petitioner in WP 10999/2003

Sri Nandha Educational Trustee  
rep. by its Chairman and Managing Trustee  
Mr.V.Shanmugham  
No.281, Chinna Muthu Street,Erode. ...Petitioner in WP  
37812/2005

A.E.T,.Marticulation Higher Secondary School  
rep. by its Secretary P.Kasiannan  
Paralathampalayam, Kathirampatti (P.O.)  
Erode. ...Petitioner in WP 41346/2005

Ansaldo College of Education,  
rep.by its Secretary  
Angaldo Nagar, Manuthirvanpodi Post,  
Chetpet (va) Polur Taluk,  
Thiruvannamalai District. ..Petitioner in WP 9753/2006

Sri Venkateswara Vidhayalaya Higher  
Secondary School & Matericulation School  
by its Correspondent K.c.Karuppanan  
Sri Vaishnavi Devi Nagar,Polavakatpalayam  
Gohichettipalayam, Erode District. ..Petitioner in WP 25350/2007

Sri Arunai Edcuational Trust rep.  
by its Secretary R.Parimala Chendren  
No.91, Thiruvoodal Street,  
Thiruvannamalai Town & District. ..Petitioner in WP 631/2009

Thirumurga Kirupananda Variyar  
Thovathiru Sundera Swamigal Medical  
Educational & Charitable Trust,  
rep. by its Registrar,  
N.H.47, Sankari Main Road,  
Ariyariur Salem 636 308 ..Petitioner in WP 4259/2009

Mailam Engineering College,  
rep.by its Administrative Officer  
Mailam,Tindivanam Taluk, Villupuram....Petitioner in WP 4647/2009

I.F.ET.College of Engineering  
rep. by its Chairman, IFET Nagaer,  
Gangarampalayam East Pondy Road,  
Valavanur Post  
Villupuram ...Petitioner in WP 4653/2009

- 1 VELAMMAL EDUCATIONAL TRUST  
REP BY ITS CHAIRMAN MR.M.V.MUTHURAMALINGAM  
4/951 TVS AVENUE ANNANAGAR WEST EXTN  
CHENNAI 101.
- 2.VELAMMAL ENGINEERING COLLEGE  
REP. BY ITS CHAIRMAN, VELAMMAL NAGAR  
AMBATTUR-RED HILLS ROAD,  
SURAPET,CHENNAI -600 066.
- 3 VELAMMAL MATRICULATION  
HIGHER SECONDARY SCHOOL REP BY ITS CHAIRMAN  
VELAMMAL NAGAR AMBATTUR-REDHILLS ROAD  
SURAPET CHENNAI 66.
- 4 VELAMMAL COLLEGE OF  
MANAGEMENT AND COMPUTER STUDIES REP BY ITS  
CHAIRMAN VELAMMAL NAGAR AMBATTUR-REDHILLS  
ROAD SURAPET CHENNAI 66.
- 5 VELAMMAL INSTITUTE OF  
TECHNOLOGY REP BY ITS CHAIRMAN VELAMMAL  
GARDENS KOLKATTA HIGH ROAD PANCHETTI  
CHENNAI 601 204.
- 6 THE VELAMMAL INTERNATIONAL  
SCHOOL REP BY ITS CHAIRMAN NEDUVARAMPAKKAM  
PANCHATTI VILLAGE PONNERI TALUK  
THIRUVALLUR DT.

7 VELAMMAL MATRICULATION HIGHER  
SECONDARY SCHOOL REP BY ITS CHAIRMAN  
VELAMMAL GARDEN THIRUPPUVANAM SIVAGANGA DT.

8 VELAMMAL RESIDENTIAL SCHOOL  
REP BY ITS CHAIRMAN LOS ANGELS LADANENDAL  
MADURAI - RAMESHWARAM HIGH ROAD SIVAGANGAI.

9 VELAMMAL MATRICULATION  
HIGHER SECONDARY SCHOOL REP BY ITS CHAIRMAN  
VIRAGANOR MADURAI DT.

10.VELAMMAL COLLEGE OF ENGINEERING & TECHNOLOGY  
REP.BY ITS CHAIRMAN,VIRAGANOR, MADURAI DISTRICT. ..Petitioners  
in WP 4663/2009

1. VEERAMAHALI MEMORIAL WELFARE  
TRUST REP BY ITS CHAIRMAN  
MR.M.V. MUTHURAMALINGAM,  
4/951 TVS AVENUE ANNA,  
NAGAR WEST EXTENTION, CHENNAI 101.

2. VELAMMAL MATRICULATION  
HIGHER SECONDARY SCHOOL,  
REP BY ITS CHAIRMAN,  
NEDUVARAMPAKKAM PANCHATTI VILLAGE,  
PONNERI TALUK  
THIRUVALLUR DISTRICT. ....PETITIONER IN W.P.NO.4664/009

SRI VENKATESWARA EDUCATIONAL  
AND HEALTH TRUST REPRESENTED BY ITS  
SECRETARY, T.G.BALACHANDRAN  
NO.1/3A, RIVER VIEW ROAD, KOTTURPURAM,  
CHENNAI-85. ....PETITIONER IN W.P.NO.5304/09

SRI ARAVINDAR ARTS AND SCIENCE  
COLLEGE RUN BY SRI ARAVINDAR EDUCATIONAL  
TRUST AGASAMPATTU VANUR TALUK,  
VILLUPURAM DISTRICT ,  
REP BY ITS SECRETARY  
A. RAJASEKARAN. ....PETITIONER IN W.P.NO.5633/09

TAMIL NADU NURSERY PRIMARY  
MATRICULATION & HIGHER SECONDARY SCHOOL  
MANAGEMENT ASSN. REP. BY GENERAL SECRETARY  
D.CHRISTDASS OLD NO.64 NEW NO.122,  
T.P.KOIL STREET,  
TRIPPLICANE CHENNAI.. ....PETITIONER IN W.P.NO.5757/09.

V.S.ISAAC COLLEGE OF EDUCATION  
REP BY ITS SECRETARY

MR.V.S. ISSAC JEBAKUMAR  
AATTUPAKKAM VILLAGE AND POST,  
ARAKKONAM TALUK,  
VELLORE DISTRICT.

...PETITIONER IN W.P.NO.6398/09

DR.RADHAKRISHNAN TEACHER  
TRAINING INSTITUTE,  
REP BY ITS CORRESPONDENT  
MR.T.MANOHARKUMAR SURANA,  
113, SALEM MAIN ROAD,  
KANIYAMOOR VILLAGE AND POST  
VILLUPURAM DISTRICT.

..PETITIONER IN W.P.NO.6399/09

G.V.MEMORIAL TRUST REP BY ITS  
TRUSTEE OWNING AND CONDUCTING SRIVALLI  
VARADARAJ MATRICULATION SCHOOL,  
VARADARAJ NAGAR,  
GULLAPURAM VILLAGE,  
PERIYAKULAM TALUK,  
THENI DISTRICT.

...PETITIONER IN W.P.NO.8719/09

BANNARIAMMAN EDUCATIONAL TRUST,  
REP. BY ITS TRUSTEE S.V.ARUMUGAM.  
HAVING ITS OFFICE AT 1212, TRICHY ROAD,  
COIMBATORE-641018.

...PETITIONER IN W.P.NO.16399/09

GANADIPATHY TULSIS JAIN  
ENGINEERING COLLEGE,  
REP BY ITS ADMINISTRATOR  
CHITTOR-CUDDALORE ROAD,  
KANIYAMBADI VILLAGE AND POST VELLORE TALUK  
AND DISTRICT.

...PETITIONER IN W.P.NO.21054/09

SRI RAM EDUCATIONAL TRUST,  
REP.BY ITS SECRETARY K.JAYARAKAN,  
NO.22,EVENING BAZAAR ROAD,  
CHENNAI-3.

..PETITIONER IN W.P.NO.21915/09

ALPHA ARTS OF SCIENCE COLLEGE  
REP.BY ITS CHAIR PERSON  
ALPHA NAGER, THUNDALAM  
KARAMBAKKAM, CHENNAI.

..PETITIONERS IN W.P.NO.2417 OF 2010.

Vs.

1.The State of Tamilnadu,  
Rep. By its Secretary to the Government,  
Rural Development Department,  
Fort St.George, Chennai - 600 009....1st Respondent in

W.P.26999/08, 41346/05,  
25350/07, 16399/99,  
21054/09



THE STATE OF TAMIL NADU,  
REP. BY ITS SECRETARY,  
RURAL DEVELOPMENT & PANCHAYAT  
RAJ DEPARTMENT,  
SECRETARIAT, FORT ST. GEORGE,  
CHENNAI - 9.

...Ist Respondent in W.P.631,  
4647, 4653, 4663 and 4664/2009

State Of Tamil Nadu  
Rep. By Its Secretary,  
Rural Development And Panchayat  
- Raj (PR-1) Department,  
Fort St.george, Chennai-9.

...Ist Respondent In  
W.P.4259, 5304, 5633, 5757,  
6398, 6399, 8719 & 21915/09  
And 2417/2010

STATE OF TAMIL NADU  
REP.BY SECRETARY TO GOVERNMENT  
MUNICIPAL ADMINSTRATIVE DEPARTMENT,  
FORT ST GEORGE, CHENNAI-600 009 .

THE COLLECTOR ,  
THIRUVANNAMALAI DISTRICT,TIRUVANNAMALAI.

PERUNGALATHUR PANCHAYAT  
REP.BY PRESIDENT  
PERUNGALATHUR VILLAGE  
TIRUVANNAMALAI DISTRICT.

... RESPONDENTS 1 TO 3 IN  
WP.NO.10999/2003

THE STATE GOVERNMENT OF TAMIL NADU,  
REP.BY ITS SECRETARY,  
RURAL DEVELOPMENT OF LOCAL  
ADMINISTRATION DEPARTMENT,  
FORT ST.GEORGE, CHENNAI-9.

...1ST RESPONDENT IN  
W.P.37872/2005

THE GOVERNMENT OF TAMIL NADU,  
REP. BY ITS SECRETARY,  
RURAL DEVELOPMENT (C2) DEPARTMENT,  
FORT ST. GEORGE,  
CHENNAI-9.

...1ST RESPONDENT IN  
W.P.9753/2006

The Director,  
Rural Development Department,  
Chennai.

...2ND RESPONDENT IN  
W.P.26999/08, 41346/2005,  
25350/2007, 4647, 4653, 4663,  
4664, 5757, 6398, 6399, 16399,  
and 21054/2009, 3rd Respondent  
in W.P.37872/2005

THE PRESIDENT,  
BLOCK DEVELOPMENT OFFICER,  
(PANCHAYAT BOARD),  
PANCHAYAT UNION, ERODE.

...2nd respondent in  
W.P.37872/2005

THE DISTRICT COLLECTOR,  
THIRUVANNAMALAI DISTRICT.

THE BLOCK DEVELOPMENT OFFICER,  
(VILLAGE PANCHAYAT),  
CHETPET PANCHAYAT UNION,  
CHETPET, THIRUVANNAMALAI DISTRICT.

THE PRESIDENT,  
MARUTHUVAMPADI VILLAGE PANCHAYAT & POST,  
CHETPET PANCHAYAT UNION,  
MARUTHUVAMPADI-606 801,  
CHETPET VIA, POLUR TALUK, ...RESPONDENTS 2 to 4 IN  
THIRUVANNAMALAI DIST. WP.NO.9753/2006

THE DIRECTOR,  
RURAL DEVELOPMENT & PANCHAYAT RAJ DEPARTMENT,  
SECRETARIAT, CHENNAI - 9.

THE DISTRICT COLLECTOR,  
TIRUVANNAMALAI DISTRICT,  
COLLECTORATE BUILDING,  
VENGIKKAL, TIRUVANNAMALAI TOWN & DISTRICT.

THE PRESIDENT,  
AYYAMPALAYAM VILLAGE PANCHAYAT OFFICE,  
AYYAMPALAYAM VILLAGE & POST, RESPONDENTS 2 to 4 IN  
TIRUVANNAMALAI DISTRICT. ...WP.NO.631/2009

THE DISTRICT COLLECTOR,  
SALEM.

THE DIRECTOR OF RURAL DEVELOPMENT,  
CHENNAI.

THE DISTRICT PANCHAYAT OFFICER,  
SALEM.

THE BLOCK DEVELOPMENT OFFICER,  
VEERAPANDI PANCHAYAT UNION,  
SALEM TALUK AND DISTRICT.

VEERAPANDI PANCHAYAT,  
REP BY ITS PRESIDENT,  
SALEM TALUK AND DISTRICT.

INAM BAIROJI PANCHAYAT  
REP BY ITS PRESIDENT,  
SALEM TALUK AND DISTRICT.

PERIYASEERAGAPADI PANCHAYAT,  
REP BY ITS PRESIDENT,  
SALEM TALUK AND DISTRICT.

PANIYANOOR PANCHAYAT  
REP BY ITS PRESIDENT,  
PANIYANOOR,  
KANCHEEPURAM DISTRICT. ...RESPONDENTS 2 to 9 IN  
WP.NO.4259/2009

The District Collector  
Kancheepuram District,  
Kancheepuram.

The Asst. Director (Panchayat)  
Rural Development Department,  
Kancheepuram.

The President  
Pennalur Panchayat,  
Pennalur-602 105,  
Sriperumpudur Taluk,  
Kancheepuram District. ....Respondents 2 To 4 In  
WP.No.5304/09

The District Collector,  
Villupuram. ...2nd Respondent In W.P.5633/09  
3rd Respondent In W.P.4647&  
4653/2009

THE DISTRICT COLLECTOR THENI DISTRICT,  
THENI.

THE ASSISTANT DIRECTOR (PANCHAYAT),  
RURAL DEVELOPMENT DEPT.,  
THENI DISTRICT, THENI.

THE PRESIDENT MUDALAKKAMPATTI PANCHAYAT,  
THENI DT. .. RESPONDENTS 2 to 4 IN  
W.P.NO.8719/2009

THE DISTRICT COLLECTOR  
THIRUVALLUR DISTRICT,  
THIRUVALLUR

..2nd Respondent In W.P.21915/09  
3rd Respondent In  
W.P.4663,4664/09

THE PRESIDENT  
KARAMBAKKAM PANCHAYAT,  
VILLIVAKKAM PANCHAYAT UNION,  
THIRUVALLUR DIST.

...2nd RESPONDENT IN  
W.P.NO.2417/2010

The President,  
Komarapalaym Village Panchayat,  
Komarapalayam,  
Erode District.

...3rd Respondent in W.P.26999/08

THE ASSISTANT DIRECTOR OF PANCHAYAT,  
ERODE.

THE PRESIDENT,  
PICHANDANPALAYAM VILALGE PANCHAYAT,  
PICHANDANPALAYAM,  
ERODE.

..RESPONDENTS 4 & 5 IN  
WP.NO.37872/2005

THE DISTRICT COLLECTOR,  
ERODE, ERODE DISTRICT.

THE PRESIDENT,  
KATHIRAMPATTI PANCHAYAT,  
KATHIRAMPATTI POST,  
ERODE 638 107.

..RESPONDENTS 3 & 4 IN  
WP.NO.41346/2005

THE DISTRICT COLLECTOR,  
ERODE, ERODE DISTRICT.

THE PRESIDENT,  
POLAVAKALIPALAYAM PANCHAYAT,  
POLAVAKALIPALAYAM,  
GOBI TALUK, ERODE DISTRICT.

..3rd & 4 RESPONDENT IN  
WP.NO.25350/2007

The District Collector  
Sivagangai District.  
Sivagangai.

The District Collector  
Madurai District,  
Madurai.



The President  
Surapattu Panchayat Union  
(First Grade), Surapattu,  
Chennai 66.

The President,  
Panchetti Panchayat,  
Panchetti, Chennai.

The President  
Neduvampakkam Panchayat,  
Neduvampakkam,  
Thiruvallur District.

The President  
Thirupuvanam Panchayat,  
Thirupuvanam,  
Sivagangai District.

The President  
Ladanendal Panchayat,  
Madurai-Rameshwaram High Road,  
Sivagangai.

The President  
Viruganoor Panchayat,  
Viruganoor,  
Madurai District. .... Respondents 4 To 11 In WP.No.4663/09

The President  
Agasampattu Panchayat,  
Vanur Panchayat Union,  
Achirampattu, Irumbai Po,  
Vanur Tk, Arovil Via,  
Villupuram District.

The Executive Officer  
Agasampattu Panchayat,  
Vanur Panchayat Union,  
Achirampattu, Irumbai Po,  
Vanur Tk, Arovil Via 605 111,  
Villupuram District. .... Respondents 3 & 4 In  
WP.5633/09

THE BLOCK DEVELOPMENT OFFICER  
NEMILI PANCHAYAT UNION, NEMILI,  
ARAKKONAM TALUK, VELLORE DT.

THE PRESIDENT  
ATTUPAKKAM VILLAGE PANCHAYAT,  
NEMILI PANCHAYAT UNION, ARAKKONAM TK,  
VELLORE DT.

.. RESPONDENTS 3 & 4 IN  
W.P.NO.6398/2009

THE ASSISTANT DIRECTOR (PANCHAYATS),  
VILLUPURAM AND DT.

THE PRESIDENT  
KANIYAMOOR VILLAGE PANCHAYAT,  
KALLAKURICHI TK, VILLUPURAM DT. .. RESPONDENTS 3 & 4 IN  
W.P.NO.6399/2009

THE PRESIDENT  
SADUMUGAI PANCHAYAT, SATHIYAMANGALAM TALUK,  
ERODE DISTRICT. .... 3RD RESPONDENT IN  
W.P.NO.16399/2009

THE DISTRICT COLLECTOR  
VELLORE AND DT.

THE PRESIDENT  
KANIYAMBADI PANCHAYAT,  
KANIYAMBADI UNION, VELLORE. .... RESPONDENTS 3 & 4 IN  
W.P.NO.21054/2009

THE ASSIST DIRECTOR (PANCHAYAT )  
RURAL DEVELOPMENT DEPARTMENT, THIRUVALLUR

THE PRESIDENT  
PERUMALPATTU PANCHAYAT,  
PERUMAL PATTU VILLAGE,  
793, REDID STREET, THIRUVALLUR DIST. ....RESPONDENTS 3 AND 4 IN  
W.P.NO.21915/2009

The President  
Mailam Panchayat,  
Mailam,  
Villupuram District. ....4<sup>th</sup> Respondent In WP.No.  
4647/09

The President  
Gangarampalayam Panchayat,  
Kandamangalam Union,  
Villupuram District. ....4<sup>th</sup> Respondent In WP.No.  
4653/09

The President  
Neduvarampakkam Panchayat,  
Neduvarampakkam,  
Thiruvallur District. ....Respondents In WP.No.4664/09

W.P.No.26999 of 2008

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Declaration, declaring that the Amendment to Clause (c) of Rule 15 of Tamil Nadu Panchayats (Assessment and Collection of Taxes) Rules, 1999 through G.O.(Ms) No.38, Rural Development and Panchayat Raj, dated 5.3.2008 and consequential demand notice issued by the 3<sup>rd</sup> respondent in Letter No.70/2008-2009 dated 23.10.2008 demanding house tax to the tune of Rs.5,50,000/- for the assessment years from 2004-2005 to 2008-2009 in respect of the buildings of the petitioner institution viz.Kamadhenu Arts and Science College are unconstitutional, ex-facie illegal.

Writ of certiorarified Mandamus calling for the proceedings of the 3rd respondent made in Assessment Notice No.1 and quash the said demand of the 3rd respondent dated 28.1.2002 and consequently direct the respondents not to levy and collect any property tax in respect of the buildings used for education purpose at Perungalathur Village, Thiruvannamalai District. (in WP No.10999/03).

calling for the records relating to the proceedings of the 2nd respondent in Na.Ka.No.2190 of 2005 A2 dated 8.10.2005 and the consequential order of the 5th respondent dated 17.10.2005 and quash the same and consequently forbear the respondents from lveying or collecting any property tax in respect of the buildings and hostel used by the petitioner for educational purposes (in WP NO.37872 OF 2005)

Writ of certiorarified Mandamus calling for the records of the 4th respondent in Demand Notice No.851, dated 6.7.2005 and the consequential demand raised by the 4th respondent dated 19.11.2005 and 15.12.2005 quash the same as illegal. (in WP No.41436 of 2005)

Writ of certiorari calling for the records in respect of the demand notice dated 10.8.2005 in Assessment No.315 on the file of the 4th respondent levying House tax on the buildings of the petitioner used for educational purpose and quash the same. (in WP No.9753 of 2006)

Writ of certiorari Calling for the records relating to the Demand Notice Nos.109010 and 109011 dated 10.7.2007 to the assessment No.1368 and 1369 in respect of the properties in Door No.3/100 and 3/101, Dasampalayam respectively owned by the petitioner institution quash the same as illegal. (in WP No.25350 of 2007)

Writ of Declaration declaring the impugned amendment of Rule 15 (c) of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rules 1999 made under Government order in G.O.Ms.No. 38 Rural Development and Panchayatraj (PR.1) dated 05.03.2008 as

illegal, discriminatory, arbitrary and unconstitutional and further direct the respondents to grant exemption to the petitioner Institutions from payment of property tax to be buildings used for educational purposes including hostels. (in WP NOS.631/09, 4052/09, 4663/09, 4664/09, 5633/09, 8719/09, 21054/09 & 21915/09)

Writ of Declaration declaring that the provisions of Rule - 15 (c) of the Tamilnadu Village Panchayat (Assessment and Collection of Taxes) Rule 1999 as amended by G.O.Ms.No.38 Rural Development and Panchayat Raj Department dated 5.3.2008 published in Tamilnadu Government Gazette issue No.69 dated 5.3.2008 and the consequential demand for House tax is illegal, ultra vires and unconstitutional in so far as the buildings used by the petitioners for educational purposes. (in WP No.4259 of 2009)

Writ of Declaration, declaring the impugned amendment to Rule 15 (c) of the Tamilnadu Village Panchayat (Assessment and Collection of Taxes) Rules 1999 made under impugned Government Order in G.O.Ms. No.38 Rural Development and Panchayat Raj (PR.1) dated 5.3.2008 and consequential demand notice dated 5.4.2008 raised by the 4th respondent for the buildings owned by the petitioner college for the period between 2005-2006 and 2007-2008 and quash the same as illegal, discriminatory, arbitrary and unconstitutional and further direct the respondents to grant exemption to the petitioner institution from payment of property tax to the buildings used for educational purpose including hostels. (in WP No.4647 of 2009)

Writ of Declaration declaring that the provisions of Rule 15 (c) of the Tamil Nadu Village Panchayat (Assessment and Collection of Taxes) Rule 1999 as amended by G.O.Ms.No.38 Rural Development and Panchayat Raj Department dated 5.3.2008 published in Tamil Nadu Government Gazette issue No.38 dt. 5.3.2008 and the consequential demand for House Tax is illegal, ultravires and unconstitutional in so far as the buildings used by the petitioners for educational purposes. (in WP No.5304 of 2009)

Writ of Declaration declaring the provision of Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999 as amended by G.O. Ms. 38 Rural Development and Panchayat Raj (PR-1) Department dated 5.3.2008 published in the Tamil Nadu Govt. Gazette Issue No.69 dated 5.3.2008 as void, unlawful, ultra, virus and unconstitutional in respect of the buildings used for educational purposes by the member educational institutions of the Petitioner Association is concerned. (in WP No.5757 of 2009)

Writ Of Declaration : Declaring The Provision Of Rule 15 (c) Of The Tamilnadu Village Panchayats (Assessment And Collection Of Taxes) Rules, 1999 As Amended By G.O. Ms.38, Rural Development And Panchayat Raj (PR-1) Department, Dt 5.3.2008, Published In The Tamilnadu Govt. Gazette Issue No.69, Dt 5.3.2008 And Consequential Demand Letter Issued By The 4th Respondent In His Proceedings Dt



4.11.2008 In Village Panchayat Resolution No.3 And In Assessment No.336 As Void, Unlawful, Ultra Virus And Unconstitutional In Respect Of The Buildings Used For Educational Purposes By The Petitioner Is Concerned In WP. No.6398/09.

Writ Of Declaration : Declaring The Provision Of Rule 15 (c) Of The Tamilnadu Village Panchayats (Assessment And Collection Of Taxes) Rules, 1999 As Amended By G.O. Ms.38, Rural Development And Panchayat Raj (PR-1) Department, Dt 5.3.2008, Published In The Tamilnadu Govt. Gazette Issue No.69, Dt 5.3.2008 And Consequential Demand Notice Issued By The 4th Respondent In His Proceedings Dt 14.3.2009 In Assessment Nos. 588, 649 And 650 As Void, Unlawful, Ultra Virus And Unconstitutional In Respect Of The Buildings Used For Educational Purposes By The Petitioner In Concerned In WP.6399 Of 2009.

Writ Of Declaration : Declaring That The Amendment Of Clause (c) Of Rule 15 Of Tamil Nadu Panchayats (Assessment And Collection Of Taxes) Rules, 1999 Through G.O.(Ms) No.38, Rural Development And Panchayat Raj, Dated 5.3.2008 And Consequential Undated Demand Notice Issued By The 3rd Respondent Signed On 28.7.2009 Demanding House Tax To The Tune Of Rs.81,78,280/- For The Assessment Years From 2001-2002 To 2008-2009 In Respect Of The Buildings Of The Petitioner Educational Institutions Viz. Bannariamman Institute Of Technology And Bannari Amman Vidya Nikatan Are Unconstitutional, Ex-facie Illegal. In WP.NO.16399/2009

Writ Of Declaration : Declaring G.O.(Ms) No.38 Rural Development And Panchayat Raj (P.R.1) Department Dated 5.3.2008 Introducing Amendment To Rule 15 Of The Tamilnadu Village Panchayats (Assessment And Collection Of Taxes) Rules 1999 And The Consequential Attachment Notice Of The 2nd Respondent Dated 11.12.2009 Along With The Notice Of Demand Of House Tax In No.27814 As Illegal, Unconstitutional And Arbitrary And Discriminative In Wp.2417 OF 2010.

For Petitioners :

W.P.No.10999 of 2003 :Mr.R.Karlmax  
W.P.No.37872 of 2005 :Ms.B.Saraswathi  
W.P.No.41346 of 2005  
W.P.No.4647, 4653, 4663, 4664 and 21054 of 2009  
:Mr.V.P.Sengottuvel

W.P.No.9753 of 2006 :Fr.A.Xavier Arulraj  
W.P.No.25350 of 2007 :Mr.N.Manokaran  
W.P.No.26999 of 2008 &  
W.P.No.16399 of 2009 :Mr.Gandhi, Senior Advocate For  
Mr.R.G.Narendhiran

W.P.No.631 of 2009 :Mr.R.Karthikeyan

W.P.No.4259 of 2009 :Mr.N.R.Chandran,Senior Advocate For  
Mr.M.Kempraj

W.P.No.5304 and 21915 of 2009  
:Mr.N.R.Chandran, Senior Advocate  
For Mr.R.Natarajan

W.P.No.5633 of 2009 : Mr.N.R.Chandran, Senior Advocate  
For Mr.B.K.Singh

W.P.No.5757, 6398 and 6399 of 2009  
W.P.No.2417 of 2010 :Mr.R.Suresh Kumar

W.P.No.8719 of 2009 : Mr.Rajnish Pathiyil

For Respondents : Mr.P.S.Raman, Advocate General  
Assisted by Mr.M.Dhandapani, Spl.G.P.  
For the State

Mr.V.Subbarayan for R3 in W.P.No.10999/2003  
Mr.R.Chandrasekaran for R2 in W.P.No.37872/2005  
Mr.D.Nagasaila for R4 in W.P.No.41346/2005  
Mr.G.Sankaran for RR3 & 4 in W.P.No.9753/2006  
Ms.S.Anitha for R4 in W.P.No.25350/2007  
Mr.B.K.Girish Neelakantan for R3 in W.P.26999/2008  
Mr.D.Sreenivasan for R4 in W.P.No.631/2009  
Mr.S.Gopinathan for RR5 to 8 in W.P.No.4259/2000  
Mrs.D.Geetha for R4 in W.P.No.4647 and 4653/2009

Mr.I.Paranthaman for RR7 & 8 in  
W.P.No.4663

Mr.R.Thirugnanam for RR3 & 4 in W.P.No.6399/2009  
Mr.S.Sundaresan for R4 in W.P.No.8719/2009  
Mr.M.Dhandapani for R3 in W.P.No.16399/2009  
Mr.V.Viswanathan for R4 in W.P.No.21054/2009  
Mr.J.Thilagaraj for R4 in W.P.No.21915/2009  
Mr.S.Sivashanmugam for R2 in W.P.No.2417/2010

## COMMON ORDER

### 1. PREAMBLE :-

1.1. These writ petitions came to be posted before this Court on being specially ordered by the Hon'ble Chief Justice . Since the issues involved in all these writ petitions are common, they were heard on 26.07.2010 and 28.07.2010 and a common order is passed.

1.2. The short question that arises for consideration is whether the educational institutions run on self-financing including the educational institutions which have started self-financing courses and having their campuses including their buildings located in areas coming under respective panchayats are liable for house tax in terms of Section 172 of the Tamil Nadu Panchayat Act, 1994 (for

short Act) and Rule 15 of Tamil Nadu Panchayats (Assessment and Collection of Taxes) Rules, 1999 (for short Rules). It is unnecessary to set out the facts in each case since only legal contentions were made in the affidavits filed in support of the writ petitions. It is suffice to deal with the arguments advanced by the learned counsel which are almost the same in all the writ petitions. Before proceeding to deal with the contentions advanced, it is necessary to recapitulate the history of such taxation.

## 2. HISTORY OF THE LEVY OF PROPERTY TAX BY PANCHAYATS IN TAMILNADU:-

2.1. Article 243-H of the Constitution enables a State Legislature to authorise the Panchayat to levy, collect and appropriate taxes.

2.2 The Tamil Nadu Village Panchayats Act 1994 was enacted pursuant to the Part IX of the Constitution. Section 172 of the Tamil Nadu Panchayats Act 1994 enables the Panchayat to impose house tax. Pursuant to the said power under section 242, the Government has framed rules known as Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules 1999 through G.O.Ms.No.255 Rural Development Department dated 13.12.1999.

2.3. Rule 15 deals with exemption from the liability of tax for specified classes of house which reads as follows:

"15.Exemption of specified classes of houses from house-tax- The following buildings shall, if they fall within the meaning of house as defined in the Act, be exempt from the house-tax.

(a) & (b) ... omitted ...

(c) buildings used for educational purposes including hostels and libraries which are open to the public and public buildings used for charitable purpose of sheltering the destitutes or animals;

(d) to (k) ...omitted...

Provided that nothing contained in clauses (a) and (c) shall be deemed to exempt from house-tax, if any building for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses:

Provided further that educational institution (not commercial in nature) exempted from levy of house tax, immediately before the commencement of the Act shall continue to be exempted under the said Act.

Explanation - The exemption granted under this rule shall not extend to residential quarters attached to schools or colleges not being the hostels or residential quarters attached to hospitals, dispensaries and libraries."

(Emphasis added)

2.4. Under the earlier Tamil Nadu Panchayats Act 1958, Section 120 provided for collection of house tax in the panchayat areas. The



relevant rule granting exemption under the old Act 1958 regarding educational institutions were as follows:

House-tax

1. Exemption of specified classes of houses from house tax-

(a) & (b) ... omitted ...

(c) buildings used for educational purposes including hostels and for libraries which are open to the public, and public buildings used for the charitable purpose of sheltering the destitute or animals;

Provided that nothing contained in clauses (a), (c) and (e) shall be deemed to exempt from house-tax any building for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses:

Provided further that buildings used for educational purposes including hostel is owned and run for such purposes or not, shall be exempt from tax.

Explanation (1) - For the purpose of the proviso to this rule the rent or other charges paid by patients in the charitable hospitals for special awards or beds shall not be deemed to be rent.

Explanation (2) - The exemption granted under this rule shall not extend to residential quarters attached to Schools and Colleges not being hostels or to residential quarters attached to hospitals, dispensaries and libraries."

(Emphasis added)

2.5. As can be seen under the old 1958 Panchayat Rules, the mention about buildings being "in commercial nature" was not found. At that time of framing of the Rule, the concept of self-financing Colleges and schools was relatively unknown.

2.6. In respect of Municipalities under the Tamil Nadu District Municipalities Act, 1920, Section 86(c) provided for exemption from Property Tax. The original provision reads as follows:-

"86. General exemption:- The following buildings and lands shall be exempt from the property tax-

(a) & (b) ... omitted ...

(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."



educational institutions were made liable to pay property tax if they were situated in a municipal area.

2.8. However after the Tamil Nadu Municipal Laws (Amendment) Act 1994 (T.N.Act 42 of 1994) total exemption was granted to buildings used for educational purpose including hostels from payment of property tax with effect from 1.4.1994. The said amendment will apply only to buildings situate within the municipal limits. Therefore, it will not apply to the buildings situate in the Panchayat areas. The said amendment to the Tamil Nadu District Municipalities Act, 1920 and the Statement of Objects and Reasons are extracted below:

"3. Amendment of Section 83- In sub-section (1) of section 83 of the Tamil Nadu district Municipalities Act, 1920, (Tamil Nadu Act V of 1920) in clause (c), for the words "public buildings and places used for the charitable purpose", the words "buildings used for educational purpose including hostels attached thereto, public buildings and places used for the charitable purpose" shall be substituted."

"STATEMENT OF OBJECTS AND REASONS

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 1<sup>st</sup> day of April 1994, in respect of Municipal Corporations. To give effect to the above decisions, it is proposed to amend the Act relating to the Municipal Corporations and Municipalities suitably."

(Emphasis added)

2.9. A careful reading of the Rule 15(c) of the Panchayat Taxation Rules clearly shows that a building used for educational purpose including hostels and laboratories if they are open to the public alone are exempted. Self-Financing Educational Institutions cannot come within the purview of Rule 15 (c). There are also two provisos and an Explanation to the said rule. The first proviso is the exemption rule and rule 15(c) will not apply even though if they are open to the public if a person pays rent for the said building. The second proviso only continues the exemption which were obtained before the 1994 Act. The Rule never intended to include buildings used for commercial nature to be exempted from the house tax either under the 1958 Act or after the 1994 Act was enacted.

2.10. A reading of the explanation will show even the residential quarters attached to Schools or Colleges are covered by the House Tax provision. Therefore, a conjoint reading of the amended rule as well as two provisos and the explanation makes it clear that it was the intention of the rule making authorities to exempt only educational institutions which are not "commercial in nature".

2.11. While construing a proviso to a provision, two decisions of the Supreme Court should be kept in mind. In *Maulai Hussein Haji Abraham Umarji vs. State of Gujarat* and another [(2004) 6 Supreme Court Cases 672], it has been held as follows:

"the normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. A proviso to a section cannot be used to import into the enacting part something which is not there, but where the enacting part is susceptible to several possible meaning it may be controlled by the proviso."

2.12. In *Tata Iron & Steel Co.Ltd., vs. State of Jharkhand and others* [(2005) 4 Supreme Court Cases 272], it has been held as follows:

"Eligibility clause, it is well settled, in relation to exemption notification must be give a strict meaning. The principle that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted, would have no application to construction of an exemption notification, and in such a case it is for the assessee to show that he comes within the purview of the exemption."

2.13. The Village panchayats have also been given the constitutional status by the introduction of part IX into the Constitution by virtue of Constitution 73<sup>rd</sup> amendment Act 1992 with effect from 24.04.1993. The present Tamil Nadu Panchayat Act has been enacted empowering them under Article 243-H to levy taxes. Therefore, the Panchayats today by virtue of the constitutional backing and the legal provision made thereunder are empowered to collect Property tax (otherwise called as House Tax). Hence, its jurisdiction to levy such tax can never be questioned.

### 3.CLAIM BY SELF-FINANCING EDUCATIONAL INSTITUTIONS:-

#### 3.1 Structure:-

The self-finance educational institutions have opted to locate their campuses in Panchayat areas mainly with a view to purchase lands at a cheaper cost and also to tap the human resources to have as its support staff. As seen from the website floated by them, most of the educational institutions have huge campus spreading over 10-50 acres. They also have a constructed area ranging from 20,000 sq.ft to 2,00,000 sq.ft. Many campuses include even staff quarters. They also tap the ground water in the Panchayat areas. Much of the sewerage are let into the lands in Panchayat. Garbage disposal is done in Panchayat areas. The students are transported from distant places by buses and most of the institutions are having 10 to 50 buses using the village roads. Their Hostels accommodate hundreds of students. Thus they utilise the services provided by the Panchayat. It is paradoxical they should come up with pleas seeking exemption from the low Property Tax which is the only source of revenue for any village panchayat. Further, due to financial sharing arranged by the State Government matching grant are given based upon the revenue augmented by each panchayat. Any reduction in the collection of Property Tax will also correspondingly will deprive the grant given by the State.

3.2. After noticing the statutory exemption granted under the Tamil Nadu District Municipalities Act, 1920, the self-financing educational institutions started approaching the Court seeking for similar exemption from payment of Property tax by interpreting upon Rule 15(c) of the Panchayat Taxation Rules in their own way without regard to the history of that legislation.

3.3. For the first time vide decision in Kamaraj College of Engineering and Technology, Managing Board, rep. By its Secretary, Virudhunagar v. President, K.Vellakulam Panchayat, Madurai District reported in 2006 (3) MLJ 1068, a learned Judge of this Court considered the question of exemption on the assessment of house tax on educational institutions under Rule 15(c) of the Tamil Nadu Village Panchayats (Assessment and Collection of Taxes) Rules, 1999. The learned Judge held that buildings used for educational purposes including hostels recognised by the State and other educational authorities irrespective of the fact as to whether they are aided or unaided or run on self-financing pattern are entitled to have the benefit of exemption from the levy of house tax as per Rule 15(c). The learned Judge held that when once the approval is given by a competent authority or affiliation given by the Universities, then such educational institutions, whether they are aided or not, are deemed to be the educational institutions as per the Rule. After the law relating to prohibition of capitation fee had been introduced by legislation, there was no question of any commercial character of an Educational Institution at all when they are recognised by authorities

3.4. However, Justice P.K.Misra, J. (as he then was) held that charitable organisations running hostels or libraries or shelter for animals alone would be eligible for exemption for House tax under



Rule 15(c) of the Panchayat Taxation Rules.

3.5. In view of the conflicting views, a reference was made to a Division Bench by another learned Judge. The then Hon'ble Chief Justice placed all the matters before a Division Bench. The Division Bench dealt with the proposition raised in the Writ Appeal arising out of the order passed by P.K.Misra,J. (as he then was) and after disagreeing with the view expressed by him and after noticing the view of Jyothimani,J. partially agreed with his view.

3.6. The Division Bench partially agreed with the order passed in Kamaraj College of Engineering and Technology's case (cited supra). In Sriiram Educational Trust, represented by its Chairman v. The President, 89, Perumalpattu Panchayat Union, Thiruvallur Taluk and District, 2008 (1) CTC 449 (07.01.2008), the Division Bench gave a carte blanche exemption to educational institutions of all types and declared that affiliation or recognition of these institutions can have no bearing on a Taxing statute. Hence, it is relevant to extract the following observations by the Division Bench:-

...We agree with the conclusion of the learned Judge in paragraph 15 of the judgment, we however, do not share the view of the learned Judge that the benefit of exemption goes for affiliated institutions only. Recognition or affiliation of an institution has nothing to do with tax exemption under Rule 15(c). The claim for exemption to educational institutions is not to be decided by inference or support drawn from requirements of the statutes which are regulatory in character. Unless the exemption provision contemplates such a condition or makes a reference to those enactments, we do not find any reason to read such restrictions into the Rule.

....On a plain reading of Rule 15(c), the dominant object or the use of the building for educational purposes alone decides the claim for exemption and nothing more or less is required. Rule 15(c) is in an unqualified term. There are no words of restriction attached to the portion dealing with educational purposes. In the above circumstances, we do not agree with the view expressed by Justice P.K.Misra and affirm the view of Justice P.Jyothimani in the decision reported in Kamaraj College of Engineering and Technology, Managing Board, rep. By its Secretary, Virudhunagar v. President, K.Vellakulam Panchayat, Madurai District, 2006(3) MLJ 1068, as stated in the preceding paragraph. "

3.7. Subsequently, the issue originally referred for consideration by a Full Bench regarding the correctness of the opinion expressed by the Division Bench. The Full Bench in 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 (dt.20.10.2009) considered the constitutional power of the Panchayat to levy house 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)

Thus the Full Bench disagreed both with the opinion of Jyothimani, J. as well as the Division Bench judgment in Sriram Educational Trust case.

#### 4. GOVERNMENT BRINGS AN AMENDMENT TO THE RULE:-

4.1. Even before the matter was decided by a Full Bench, the Government brought an amendment by G.O.(Ms).No.38, Rural Development and Panchayat Raj Department dated 05.03.2008 to cover even aided educational institutions which open self-financing courses in the same campus and collect different fees from students to study those courses w.e.f. 05.03.2008. The intention was to get over the effect of the decision rendered by the Division Bench.

4.2. Rule 15 deals with exemption from the liability of tax for specified clauses of house which reads as follows:-

"15.Exemption of specified clauses of houses from house-tax:-The following building shall, if they fall within the meaning of house as defined in the

Act, be exempt from the house-tax.

x x x            x x x            x x x  
"(c) buildings used for educational purposes including hostels and libraries run by the Government or local bodies and institutions aided by the Government and public buildings used for charitable purpose of sheltering the destitutes or animals"...

Provided that nothing contained in clause (a) shall be deemed to exempt from house-tax, if any building for which rent is payable by the person or persons using the same for the purposes referred to in the said clause.

x x x            x x x            x x x  
"Provided also that the buildings used for educational purposes by Government-aided institutions, for conducting self-financing unaided courses shall be subject to levy of house-tax". This Rule shall take effect from 05.03.2008".

Admittedly, at the time when the matter was argued before the Full Bench, this Government Order was not brought to notice by the Full Bench which is raised as a point by some of the learned counsel appearing in these cases.

#### 5. PRESENT CHALLENGE:-

5.1 Mr. Gandhi, learned Senior Counsel, apart from giving written submission made oral submissions stating that the decision of the Division Bench was well considered and it related to 100 educational institutions. Since the Full Bench was considering the correctness of the earlier order, all the institutions which were benefited and parties before the Division Bench should have been given notice. He also submitted that the Full Bench erroneously held that under Section 172 of the Act, Panchayats are bound to levy tax without noticing that there can be general power of exemption given to the State government under the Tamil Nadu Panchayat Act. He also submitted that the institutions are likely to file review applications. This Court made it clear that none of the counsel appearing for the parties can argue before this Court about the correctness or otherwise of the decision rendered by the Full Bench. This Court is duty bound to follow the ratio laid down by the Full Bench. It is an irony that learned counsel should make submission criticising the procedure adopted by the Full Bench. However they were not prevented to make submissions as interveners as per the Rules and the Full Bench decision was rendered after hearing the parties in the open Court.

5.2 The learned counsel in some of the writ petitions argued that in respect of institutions located in areas coming under Municipalities and Municipal Corporations, a total exemption is given from the Property Tax levied by such local bodies whereas Panchayat are charging Property Tax that is discriminatory.



6.WHETHER THE EXEMPTION GRANTED UNDER THE MUNICIPALITIES ACT CAN BE  
PRESSED INTO SERVICE:-

6.1. While challenging the vires of tax levied by a Panchayat, one can only look into the provisions of the Panchayat Act. Similar legislations applied to other bodies cannot be telescoped into the present law to decide the vires of the tax levied. In this context, it is necessary to refer to the judgment of the Supreme Court in State of Tamil Nadu and others v. Ananthi Ammal and others reported in (1995) 1 SCC 519, wherein in paragraphs 6 and 7, it was held as follows:-

"6. In State of M.P. v. G.C. Mandawar a Constitution Bench held that Article 14 does not authorise the striking down of the law of one State on the ground that, in contrast with the law of another State on the same subject, its provisions are discriminatory, nor does it contemplate the law of the Centre or of a State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of the two. The sources of authority for the two being different, Article 14 can have no application. In Sant Lal Bharti v. State of Punjab this was reiterated.

7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis."

Hence, the challenge on that ground must fail.

7. WHETHER THE UNADIED EDUCATIONAL INSTITUTIONS CAN BE TREATED  
DIFFERENTLY:-

7.1. Thereafter, the learned counsel submitted that there cannot be any distinction between an aided institution and unaided institution. They also stated that imparting education is a charitable purpose and since the purpose is to render education, there should not be a different taxation. Some other counsels also submitted that while fixing the fees structure, this additional levy was never considered and therefore, the educational institutions will be put to loss if suddenly they are made to pay these amounts. The learned counsel referred to the judgment of the Supreme Court in T.M.A.Pai Foundation and others v. State of Karnataka and others reported in (2002) 8 SCC 481. The learned counsel also stated that Article 21A of the Constitution has made the right to education as a fundamental right and therefore, there should not be any



7.2. Coming to the question of whether the aided educational institutions and the self-financing institutions should be treated alike, no inspiration can be drawn from T.M.A.Pai Foundation's case (cited supra). Even in that case, the Supreme Court kept the distinction between an aided institution and an unaided institution while answering question Nos.5(b) and (c). The respective questions and answers furnished by the Supreme Court may be usefully extracted below:-

"Q.5.(b) Whether the minority institutions' right of admission of students and to lay down procedure and method of admission, if any, would be affected in any way by the receipt of State aid?

A. While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe bye-rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State qua non-minority students. The merit may be determined either through a common entrance test conducted by the university or the Government concerned followed by counselling, or on the basis of an entrance test conducted by individual institutions - the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the society.

Q.5.(c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition/ withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the

freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.

The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.

Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff.

Fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee."

(Emphasis added)

#### 8. WHETHER THE RIGHT UNDER ARTICLE 21A ENABLES THEM TO BE TREATED ON PAR WITH AIDED INSTITUTIONS?

8.1 Even before introduction of Article 21A similar arguments based on constitutional duty were addressed based upon the right to education found in Part IV of the Constitution and such an argument was rejected by the Supreme Court in *Meerut Development Authority v. Association of Management Studies* and another reported in (2009) 6 SCC 171. The following passages found in paragraphs 61, 65 and 67 may be usefully extracted below:-

"61. The learned Senior Counsel relied on the decisions of this Court in *Unni Krishnan, J.P. v. State of A.P.* and *T.M.A. Pai Foundation v. State of Karnataka* to highlight the importance of private educational institutions and their entitlement to get assistance from the State or other authorities in the form of various concessions. The allotment of land at a reasonable rate according to the learned Senior Counsel subserves public interest. We find no relevance of those judgments to decide the case on hand. AMS may have established engineering colleges to impart education and may have a role to play in providing education in engineering courses; but it cannot insist MDA to provide land at the rate chosen by it for itself.

65. We accordingly find no merit in the submission of AMS placing reliance upon the directive principles of State policy and more particularly, Article 41 of the Constitution of India which says that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. The State had already made effective provision for securing right to education by resolving to make the land available at concessional rate to educational institutions imparting education in engineering courses. Obviously, such a decision was taken only with the view to give effect to the directive principles of State policy enshrined under Article 41 of the Constitution of India. AMS has no legal or constitutional right to make any perpetual demands and dictate terms to MDA to allot any particular land at the chosen rate.

67. The expression "public interest" if it is employed in a given statute is to be understood and interpreted in the light of the entire scheme, purpose and object of the enactment but in the absence of the same it cannot be pressed into service to confer any right upon a person who otherwise does not possess any such right in law. In what manner has this Court to arrive at any conclusion that MDA's decision in calling for fresh tender from the interested persons for making the land available for residential use is not in public interest? Repeated attempts were made before us to say that providing the land in question for educational use will be more appropriate and subserve public interest than making it available for residential use. Public interest floats in a vast, deep ocean of ideas, and "imagined experiences". It would seem to us wise for the courts not to venture into this uncharted minefield. We are not exercising our will. We cannot impose our own values on society. Any such effort would mean to make value judgments."

(Emphasis added)

8.2 The argument based upon Right to Education under Article 21-A of the Constitution cannot be available to educational institutions. On the other hand, the right flows to the students by



such a constitutional guarantee and the private educational entrepreneurs cannot draw any support from such an Article. In this context, it is necessary to refer to a judgment of the Supreme Court in *Avinash Mehrotra v. Union of India and others* reported in (2009) 6 SCC 398. The following passages found paragraphs 32 and 33 may be usefully extracted below:-

"32. Education remains essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens.

33. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21-A, which reads as follows, places one obligation primarily on the State:

"21-A. Right to education.—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine."

(Emphasis added)

Hence, such a right under Article 21A is not available to the petitioners.

#### 9. WHETHER THE LAW WAS UNCONSTITUTIONAL?

9.1. The last argument was that by the Government Order amending the Rule (which are impugned in some other writ petitions), taxes are sought to be levied in respect of self-financing institutions since prior to that there was no levy of Property Tax cannot be accepted. As can be seen from the history of such levy of property tax set out in the earlier part of this judgment, the law was that always the Self-financing institutions are covered by the Property Tax Rules and were not exempted from payment of Property Tax. On the other hand, the Government Order which granted exemption was made under Section 242 of the Panchayat Act. Such an exemption will have to be strictly construed. The legal position before and after the present Tamil Nadu Panchayat Act was enacted was that even aided institutions which start self-financing courses will be subject to payment of property tax. Even those institutions cannot challenge the coverage under the Property Tax because there is no fundamental right to get an exemption from Property Tax is available to them.

9.2. In the matter of exemption of a taxing statute, it is for the State to make proper classification. It cannot be said such classifications are hit by Article 14 either on the ground of it being a class legislation or that such a tax will amount to arbitrary exercise of power. In this context, it is necessary to refer to the decision of the Supreme Court in *R.K. Garg v. Union of*



India reported in (1981) 4 SCC 675, wherein in paragraph 8 it was held as follows:

"8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait-jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. The court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Morey v. Doud* where Frankfurter, J., said in his inimitable style:

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

The Court must always remember that "legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry"; "that exact wisdom and nice adaption of remedy are not always possible" and that "judgment is largely a prophecy based on meagre and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be

crudities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The courts cannot, as pointed out by the United States Supreme Court in *Secretary of Agriculture v. Central Roig Refining Company* be converted into tribunals for relief from such crudities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions. If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues".

9.3. On the question of discrimination in the matter of grant of exemption in a taxing statute, the Supreme Court in *Sri Krishna Das v. Town Area Committee, Chirgaon* reported in (1990) 3 SCC 645, in paragraph 31 observed as follows:-

"31. The contention that the tax is discriminatory in view of the exemptions granted to some of the products and to those that enter the TAC by rail or motor transport is equally untenable. It is for the legislature or the taxing authority to determine the question of need, the policy and to select the goods or services for taxation. The courts cannot review these decisions. In paragraph 16 of the counter-affidavit the TAC tried to explain the reason for not taxing salt, sugar and rice stating that they were not local produce but were imported from distant places and that the tax was levied only on the local produce which came from the neighbouring places. Courts cannot review the wisdom or advisability or expediency of a tax as the court has no concern with the policy of legislation, so long as they are not inconsistent with the provisions of the Constitution. It is only where there is abuse of its powers and transgression of the legislative

function in levying a tax, it may be corrected by the judiciary and not otherwise. Taxes may be and often are oppressive, unjust, and even unnecessary but this can constitute no reason for judicial interference. When taxes are levied on certain articles or services and not on others it cannot be said to be discriminatory. Cooley observes: "Every tax must discriminate; and only the authority that imposes it can determine how and in what directions." The TAC having decided to impose weighing dues on the goods mentioned in the bye-laws it is not for the court to question it on the ground that some similar commodities or commodities arriving by rail or road were not subjected to the tax."

(Emphasis added)

Hence, all the contentions raised must necessarily fail and all the writ petitions are liable to be dismissed.

10. MAINTAINABILITY OF WP.No.5757 of 2009:-

In W.P.No.5757 of 2009 filed by Tamil Nadu Nursery, Primary, Matriculation and Higher Secondary Schools Managements Association, challenging the demand of property tax in respect of several panchayats, it is claimed by the Association they have 970 members and challenge is made on behalf of all of them. Such an omnibus prayer can never be entertained by this Court regarding the demand for house tax made by various panchayats in respect of institutions situated in their own panchayat areas. Therefore, that writ petition is also liable to be rejected on grounds of maintainability and also on merits.

11. In the result, all the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions will stand closed.

सत्यमेव जयते

Sd/-

Asst.Registrar.

/true copy/

WEB COPY

Sub Asst.Registrar.

svki

TO

1.THE SECRETARY TO THE GOVERNMENT  
STATE OF TAMILNADU,  
RURAL DEVELOPMENT DEPARTMENT,  
FORT ST.GEORGE, CHENNAI - 600 009.

2. THE SECRETARY,  
RURAL DEVELOPMENT & PANCHAYAT  
RAJ DEPARTMENT,  
SECRETARIAT, FORT ST. GEORGE,  
CHENNAI - 9.

3. THE SECRETARY  
RURAL DEVELOPMENT AND PANCHAYAT  
- RAJ (PR-1) DEPARTMENT,  
FORT ST. GEORGE, CHENNAI-9.

4. THE SECRETARY TO GOVERNMENT  
MUNICIPAL ADMINISTRATIVE DEPARTMENT,  
FORT ST GEORGE, CHENNAI-600 009 .

5. THE SECRETARY TO GOVERNMENT  
RURAL DEVELOPMENT OF LOCAL  
ADMINISTRATION DEPARTMENT,  
FORT ST. GEORGE, CHENNAI-9.

6. THE SECRETARY TO GOVERNMENT  
RURAL DEVELOPMENT (C2) DEPARTMENT,  
FORT ST. GEORGE,  
CHENNAI-9.

7. THE DIRECTOR,  
RURAL DEVELOPMENT DEPARTMENT,  
CHENNAI.

8. THE DISTRICT COLLECTOR,  
THIRUVANNAMALAI DISTRICT.

9. THE DISTRICT COLLECTOR,  
SALEM.

10 THE DISTRICT COLLECTOR  
KANCHEEPURAM DISTRICT,  
KANCHEEPURAM.

11. THE DISTRICT COLLECTOR,  
VILLUPURAM.

12. THE DISTRICT COLLECTOR THENI DISTRICT,  
THENI.

13. THE DISTRICT COLLECTOR  
THIRUVALLUR DISTRICT,  
THIRUVALLUR

14. THE DISTRICT COLLECTOR,  
ERODE, ERODE DISTRICT.



15. THE DISTRICT COLLECTOR  
SIVAGANGAI DISTRICT.  
SIVAGANGAI.

16. THE DISTRICT COLLECTOR  
MADURAI DISTRICT,  
MADURAI.

17. THE DISTRICT COLLECTOR  
VELLORE AND DT.

18. THE DIRECTOR  
RURAL DEVELOPMENT AND PANCHAYAT RAJ DEPARTMENT  
SECRETARIAT, CHENNAI-9.

19. THE BLOCK DEVELOPMENT OFFICER  
(VILLAGE PANCHAYAT)  
CHETPET PANCHAYAT UNION  
CHETPET, THIRUVANNAMALAI DISTRICT

20. THE DISTRICT PANCHAYAT OFFICER  
SALEM

21. THE BLOCK DEVELOPMENT OFFICER  
VEERAPANDI PANCHAYAT UNION  
SALEM TALUK AND DISTRICT

22. THE ASSISTANT DIRECTOR (PANCHAYAT)  
RURAL DEVELOPMENT DEPARTMENT  
KANCHEEPURAM

23. THE ASSISTANT DIRECTOR (PANCHAYAT)  
RURAL DEVELOPMENT DEPARTMENT  
THENI

24. THE ASSISTANT DIRECTOR OF PANCHAYAT  
ERODE

25. THE EXECUTIVE OFFICER  
AGASAMPATTU PANCHAYATSVANUR PANCHAYAT UNION  
ACHIRAMPATTU, IRUMBAI PO  
VANUR TK, AROVIL VIA 605 111  
VILLUPURAM DISTRICT

26. THE BLOCK DEVELOPMENT OFFICER  
NEMILI PANCHAYAT UNION, NEMILI  
ARAKKONAM TALUK, VELLORE DISTRICT

27. THE ASSISTANT DIRECTOR (PANCHAYAT)  
VILLUPURAM

28. THE ASSISTANT DIRECTOR (PANCHAYAT)  
RURAL DEVELOPMENT DEPARTMENT  
THIRUVALLUR.

- 1 cc to Mr.R.G. Narendhiran, Advocate, Sr. 55343  
1 cc to Mr.R. Shivakumar, Advocate, Sr. 56182  
1 cc to M/s. Rajnish Pathiyil Advocate, Sr. 55276  
3 ccs to Mr.P. Sureshkumar, advocate, Sr. 55651, 55655, 55656  
1 cc to Mr.R. Thirugnanam, Advocate, Sr. 54381  
1 cc to Mr.B.K. Singh, Advocate, Sr. 55807  
2 cc to Mr.R. Natarajan, Advocate, Sr. 55442, 55443  
5 ccs to Mr.V.P. Sengottuvel, advocate, Sr. 55682, 55689, 55690, 55691, 55692  
1 cc to Mr. Kempraj, Advocate, Sr. 55806  
1 cc to Mr.R. Karthikeyan, advocate, Sr. 55464  
1 cc to Mr.N. Manokaran, Advocate, Sr. 55896  
1 cc to Mr.A. Xavier Arulraj, Advocate, Sr. 55470  
1 cc to Government Pleader, Sr. 56018

W.P.No.26999 of 2008,  
W.P.No.10999 of 2003,  
W.P.Nos.37872 &  
41346 of 2005,  
W.P.No.9753 of 2006,  
W.P.No.25350 of 2007,  
W.P.Nos.631,4259, 4647,  
4653, 4663, 4664,  
5304,5633,5757, 6398,  
6399, 8719, 16399,  
21054, 21915 of 2009 and  
W.P.No.2417 of 2010

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