

CASE NO.:
Appeal (civil) 1083-1084 of 2000

PETITIONER:
Agastyar Trust

RESPONDENT:
Commissioner & Secretary to Government Revenue Department & Anr.

DATE OF JUDGMENT: 15/03/2005

BENCH:
S.N. Variava, Dr. AR. Lakshmanan & S.H. Kapadia

JUDGMENT:
J U D G M E N T

Dr. AR. Lakshmanan, J.

These appeals were filed by the appellant-Trust against the final judgment and order dated 30.7.1999 passed by the High Court of Judicature at Madras in Writ Appeal No. 1190 of 1999 and C.M.P. No. 11716 of 1999 whereby the High Court dismissed the appeal preferred by the appellant against the order of the learned single Judge of the High Court in Writ Petition No. 14745 of 1988 and W.M.P.No.22080 of 1988 denying the appellant exemption from paying urban land tax. The short facts are as follows:

The instant case relates to the exemption of the land held by the appellant for the period 1965 to 1976 from the payment of urban land tax under the Tamil Nadu Urban Land Tax Act, 1966 (hereinafter referred to as "the Act"). The appellant-Trust was established under a trust deed with charitable objects in the year 1941. By a deed, the appellant-Trust declared and affirmed to be a public trust with charitable or religious objects. The State of Tamil Nadu issued G.Os being G.O.Ms. No. 1947 dated 17.9.1976, 2056 dated 4.10.1976 and 2625 dated 27.12.1976 respectively declaring the norms for exemption from the payment of Urban Land Tax under the Act. The said G.O. stipulated that all institutions recognized as charitable institutions under the Indian Income Tax Act will be dealt as such under the Act. It is also stipulated that exception is to be given if the income is used solely for the objectives and purpose of the Trust.

It is pertinent to notice that the appellant-Trust was recognized as a public charitable trust under Section 12A(a) of the Income Tax Act vide order 29.4.1977 passed by the Income Tax Appellate Tribunal. In this context, it is pertinent to notice that the appellant claims exemption of the land held by it for the period from 1965 to 1976 from the payment of urban land tax under the Act. Since the order was passed on 29.4.1977 by the Income Tax Appellate Tribunal recognizing the appellant-Trust as a charitable Trust under Section 12A(a) of the Act, the appellant cannot claim the benefit of the order dated 29.4.1977 to their Trust since the exemption of the land from payment of urban land tax was claimed only for the period 1965 to 1976. The Assessing Authority under the Act imposed urban land tax on the appellant-Trust. The appellant preferred Writ Petition No. 4468 of 1977 which was allowed by the High Court allowing the appellant to approach the authorities under Section 27 of the Act. Pursuant to the order of the High Court, the appellant approached the authorities for exemption under Section 27 of the Act which was rejected by the authorities on 28.1.1982. The appellant preferred a writ petition being W.P. No. 1562 of 1982. The respondents issued a fresh G.O. being G.O. Ms. No. 1834(Rev.) dated 29.10.1983 stipulating fresh and additional norms for the benefit of exemption from payment of urban land tax. The Writ Petition No. 1562 of 1982 filed by the appellant was allowed directing fresh disposal of the appellant's application keeping in view that bodies which have been recognized as charitable institutions must be exempted by the Urban Land Tax Authorities. The appellant-Trust requested for disposal of its application in terms of the judgment and order dated 18.4.1988 passed by the High Court.

While so, the respondents asked the appellant to make a fresh application along with audited statements. The appellant requested the authorities that its pending application be considered. The respondents by order dated 4.10.1988 rejected the application of the appellant vide order Lr.(Ms) No.1896 on the ground that the appellant did not satisfy the norms stipulated in G.O.Ms. No. 1834(Rev) dated 29.10.1983. In the meanwhile, a Contempt Application was filed bringing to the notice of the High Court that the application of the appellant was decided de hors the directions of the High Court in W.P.No. 1562 of 1982 directing the authorities to dispose of the application keeping in view that bodies which have been recognized as charitable institutions must be exempted by the Urban Land Tax Authorities. The said contempt application was withdrawn with liberty to challenge the order dated 4.10.1988 passed by the respondents. Hence the appellant preferred W.P.No. 14745 of 1988 and C.M.P. No. 22080 of 1988 challenging the aforesaid order. The said writ petition was rejected by the learned single Judge on 3.9.1998. The appellant preferred Writ Appeal No. 1190 of 1999 along with C.M.P. No. 11716 of 1999 which was again dismissed by the Division Bench on 30.7.1999. Aggrieved by that, the appellant preferred the special leave petitions on 16.12.1999 and this Court granted leave on 11.2.2000.

We heard Mr. Uday U. Lalit, learned senior counsel appearing for the appellant-Trust and Mr. S. Balakrishnan, learned senior counsel appearing for the respondents.

Learned senior counsel appearing for the appellant invited our attention to the orders passed in various writ petitions, the Government Orders and also of the impugned orders and the orders passed by the authorities rejecting the claim for exemption. He submitted that the appellant-Trust was entitled to exemption from paying urban land tax as it met the criterion laid down in the Government Order G.O.Ms. No. 2625 (Rev) dated 27.12.1976, which clearly stated that all institutions recognized as charitable institutions under the Income Tax Act will be dealt as such for the purpose of concessions under the Act. He would further submit that the High Court has failed to appreciate that the entitlement to exemption from paying urban land tax should have been decided in accordance with the law that existed in the assessment years for which the exemption was sought and not in accordance with any subsequent Government Order. It was further contended that the High Court has failed to appreciate that the G.O. Ms. No. 1834 dated 29.10.1983 cannot be construed as to have the effect of altering the law applicable in the year of assessment in which the claim of exemption was made. It was further contended that the subsequent G.O.Ms. No. 1834 dated 29.10.1983 laid down additional conditions for the grant of exemption and they will not have effect of denying the appellant the benefit as it is not retrospective in effect and consequently it can not be applied to the assessment years for which the exemption was sought. Learned senior counsel invited our attention to the order passed by the High Court in Writ Petition No. 1562 of 1982 which had directed the respondents to consider the claim of the appellant in accordance with the terms and conditions of the Government Order G.O. Ms. No. 2625 (Rev) dated 27.12.1976 and accordingly the claim should have been settled in the light of the said Government Order. He would further submit that the order passed in Writ Petition No. 1562 of 1982 has become final in so far as the parties were concerned since no appeal had been filed against it and the principle of res judicata under Section 11 Explanation 4 of the C.P.C. is applicable to the present case and the Government is precluded from relying on the basis of the G.O. Ms. No. 1834 dated 29.10.1983 which it did not bring to the notice of the Court during the pendency of the writ petition.

Mr. S. Balakrishnan, learned senior counsel appearing for the respondents, reiterated the contentions raised before the authorities and also of the High Court and submitted that the appellant is not entitled to claim exemption from payment of urban land tax on the basis of the order passed by the Income Tax Authorities since the exemption claim made by the appellant was only for the period 1965 to 1976 from payment of urban land tax and whereas the Income Tax Department recognized the appellant as a public charitable trust under Section 12A(a) of the Income Tax Act vide Order dated 29.4.1977 passed by the Income Tax Appellate Tribunal. He would further submit that G.O.Ms. Nos. 1947, 2056 and 2625 were subsequently modified by the respondents and that the appellant-Trust itself requested for the disposal of

its application in terms of the judgment and order dated 18.4.1988 passed by the learned single Judge of the High Court and thereafter the respondents asked the appellant to make the fresh application along with audited statements. Unfortunately, the subsequent G.O. Ms. No. 1834(Rev) dated 29.10.1983 was not brought to the notice of the learned single Judge while disposing of writ Petition No. 1562 of 1982. The authorities while considering the claim for exemption as per the orders of the Court considered all the earlier G.Os and G.O.Ms. No. 1834(Rev) dated 29.10.1983 and rejected the claim for exemption made by the appellant. G.O. Ms. No. 1834(Rev) dated 29.10.1983 was already in existence when the authorities considered the application on 4.10.1988 for claim for exemption and rejected the same by a detailed order.

The contention of the learned senior counsel appearing for the appellant that the criteria laid down in G.O. Ms. No. 2625 (Rev) dated 27.12.1976 alone should have been taken into consideration and not the other G.Os has no force since while construing the claim, after remand, the authorities are under obligation to consider all the G.Os which are in existence at the time of disposal of the application. Therefore, we hold that the authorities had rightly applied the test in terms and conditions mentioned in G.O. Ms. No. 1834 dated 29.10.1983 to the case on hand. The only contention which was urged by the learned senior counsel appearing for the appellant was that since the appellant-Trust was recognized as a public charitable trust under Section 12A(a) of the Income Tax Act, the appellant-Trust should have been granted exemption from payment of urban land tax for the period 1965-1976. As already noticed the said claim has no force since the income Tax Department has recognized the appellant-Trust as a charitable Trust under Section 12A(a) of the Income Tax Act only on 29.4.1977 and, therefore, the said order cannot be given retrospective effect.

We have perused G.O.Ms. No. 2625 (Rev) dated 27.12.1976 passed by the Government of Tamil Nadu which in turn refers to earlier G.O. Ms. 1947 Dated 17.9.1976 and G.O. Ms. No. 2056 (Rev) dated 4.10.1976. Clause (vi) of the said G.O. is reproduced hereunder:

"In the G.O. first cited, Government have 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, they have also directed that urban land tax be reduced to 50% in respect of both vacant land and land on which buildings have been constructed which belong to community recreation centres, clubs and cine studios. These concessions are operative with retrospective effect from 01.07.1975 and will be available only so long as the urban land is specifically used for the purposes of the institutions concerned. 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. 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 the same G.O. the Government have constituted an 'Empowered Committee' for the purpose of examining and making recommendations to the Government regarding cases eligible for the above concessions. These concessions will now be given with retrospective effect from the Faslis from which such exemption has been prayed for by the respective institutions provided that there will be granted as provided for in the G.O. first cited on specific application to Government and on the basis of the recommendation of the Empowered Committee."

It is seen from the above G.O. that the 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. The G.O. further stipulates 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. The G.O. further states that these concessions will now be given

with retrospective effect from the Faslis from which such exemption has been prayed for by the respective institutions provided there will be granted as provided for in the G.O. first cited that is G.O. Ms. No. 1947 (Rev) dated 17.9.1976 on specific application to Government and on the basis of the recommendation of the Empowered Committee.

Learned counsel appearing for the appellant fairly conceded that the appellant-Trust have based their claim only on the basis of the Government Order and of the order passed by the Income Tax Department and have not made any specific application to the government before 29.9.1980. No earlier application was ever produced either before the High Court or before this Court. The recommendations of the Empowered Committee have also not produced or placed before us. It is thus clear that the appellant-Trust is not entitled to claim exemption from payment of Urban land Tax in the absence of any prayer for such exemption by a specific application to the Government and on the basis of the recommendation of the Empowered Committee.

As already noticed, the respondents while considering G.O. Ms. No. 1834 dated 29.10.1983 which was already in existence, the said G.O. in turn, refers to five other Government Orders which are as follows:

1. G.O. Ms. No. 1947, Revenue dated 17.9.1976
2. G.O. Ms. No. 2625, Revenue dated 27.12.1976
3. G.O. Ms. No. 1803 Revenue dated 1.8.1978
4. Government letter No. 78025(a)/Ui/78-13 Revenue Dated 24.9.1980
5. G.O. Ms. No. 461, Revenue dated 17.3.1983

The existing guidelines as per the above G.O. are as under:

1. The institutions should have been recognized as charitable and exemption granted under Section 12A(a) of the Income Tax Act, 1961.
2. The institutions should spend at least 90% of its net income towards its objectives and purposes, after deducting all the inevitable charges like payment of local taxes, repairs and maintenance etc.
3. The institution should be a public trust and not a private trust.

The exemption committee constituted in G.O. Ms. No. 461, Revenue dated 17.8.1983 felt that the existing norms for grant of exemption from urban land tax needed some revision, since in the existing norms there is no ceiling regarding the expenses on establishment to be deducted out of the income in respect of religious institutions and trusts. They felt that the present norms require the institution to spend 90% of the net income towards its objectives which is on the high side and, therefore, the Government on the basis of the recommendation of the Committee revised the norms and guidelines for grant of exemption to the religious charitable trust etc.

In this context, it is useful to see the order dated 4.10.1988 passed by the Commissioner and Secretary to the Government, Revenue Department. A detailed order was passed by the Commissioner and Secretary to the Government of T.N. It is useful to reproduce paragraph 3 of the said order which reads as under:

"Section 29(k) of the Tamil Nadu Urban Land Tax Act, 1966 provides for grant of exemption to any Urban land actually used for religious, charitable or philanthropic purposes by such religious, charitable or philanthropic institutions but not including any Urban Land owned by such institutions and (i) which is vacant or (ii) in which buildings, from which income is derived, have been constructed. While examining the instant case with reference to above Section, it is seen that the trust owns 62 grounds and 2243 sq. ft. of Urban lands in Tondiarpet, T. Nagar and Thiruvottiyur Villages. The whole extent is assessed to Urban Land tax, for which it has sought exemption. The Urban lands in Tondiarpet Village are used for running cinema theatre, saw mill, godown etc. and the lands in T.Nagar and Thiruvottiyur villages are used as residential buildings. The objectives of the Trust, according to the trust deed, are as follows:

- i) to establish, conduct and maintain residential and non-residential schools, colleges and other institutions for

imparting general, technical, vocational, professional and/other kinds of education and training for the welfare of the general public.

- ii) to provide scholarships for the benefits of students and to make donations and grants to other institutions for the benefit of students and scholars and in furtherance of education and
- iii) such other things.

It is obvious from the above, that the buildings are not used for the objective of the trust. The trust is not running any educational institution in accordance with its objectives. It has not also furnished any evidence to show that it is providing scholarships for the benefits of students. In view of this, the lands which are used as Cinema theatre, saw mill, godowns, let out for residential and commercial purposes do not deserve exemption under Section 29(k) of the Act."

It was further observed,

"The grant of exemption under section 27(1) is obligatory and not mandatory, and it is a matter of Governmental discretion governed by reasonable guidelines issued by the Government. Accordingly, the Government have issued executive instructions in G.O.(Ms) No.1947, Revenue dated 17.9.1976 and in G.O.(Ms) No. 2625, Revenue dated 27.12.1976 for the grant of exemption under section 27(1) of the Act in respect of the vacant lands and the lands on which buildings have been constructed from which the Charities, philanthropic and Educational Institutions derive income which is being used solely for the objectives of and purposes of such institutions but subject to the conditions that such concessions will be granted on specific application to Government. The Government in G.O.Ms.No.1834, Revenue, dated 29-10-1983, have also prescribed certain norms and conditions for grant of exemption under Section 27(1) of the Act."

The paragraphs 5 & 6 of the order read as under:

"While examining the case, with the available particulars already furnished by the Trust, it is considered that the trust is not eligible for grant of exemption for the following reasons:-

- i) The trust has not satisfied the main norms that it has to spend 90% of its income for its objectives and purposes during the years 1976-77, 1977-78 and 1978-79 it has spent only 9.9%, 49.5% its net income for its objectives.
- ii) The whole extent of the lands are used for commercial and residential purposes. No piece of land is used for the charitable purpose. Further it has not produced any evidence to show that the income is spent for the objectives and purposes of the Trust.
- iii) Though the Trust has satisfied one of the norms that it has been recognized as a charitable institution under Section 12a(a) of the Income Tax Act, 1961 it has no binding force to exempt the lands owned by the Trust from the provisions of the Urban Land Tax Act also.
- iv) Further the lands owned by the Trust are not eligible for grant of exemption under Section 29(K) of the Act since the buildings are used as Cinema Theatre, Saw Mills, Godowns and let out for commercial/residential purposes.
- v) The Trust is also not eligible for grant of exemption Under Section 27(1) (Hardship clause) of the Act, because the lands are used for running cinema theatre, saw mill, godowns and let out for commercial/residential purposes and it derives a large income from the lands. Hence it has no undue hardship to pay the tax.

In the circumstances stated above, the Government have decided that

the Agasthyar Trust is not eligible for grant of exemption from the payment of urban land tax in accordance with the Tamil Nadu Urban Land Tax Act, 1966, and the existing executive orders. Your exemption petitioner is accordingly rejected."

Aggrieved by the above order, the appellant preferred writ petition before the High Court to quash the above order dated 4.10.1988 and to direct the respondents herein to grant exemption from payment under Section 27 of the Act in respect of the urban land held by the Trust. The said writ petition was dismissed by a detailed order passed by the learned single Judge which was affirmed by the Division Bench of the High Court in W.A.No. 1190 of 1999. The order passed by the Division Bench of the High Court reads as under:

"Heard both sides. In an enquiry initiated at the instance of the appellant, who has claimed exemption from payment of Urban Land Tax it has been found that the appellant does not satisfy the guidelines mentioned in G.O.Ms.No.1843 Revenue dated 29-10-1983 for claiming exemption as prayed for. It has been found that the appellant trust does not satisfy the claim that it has to spend 90% of its income for charitable purposes. It has only spent 9.9% and 49.5% of its net income for the said objectives. Inter alia it has further been found that the whole extent of the lands of the appellant are used for running cinema theatre, saw mill, godowns the same are let out for commercialized residential purposes and they truly derives a large income from the lands and no piece of land is used for charitable purposes. Moreover no evidence has been produced by the appellant to show that the income of the trust is spent for the charitable purposes. The aforesaid finding of the 1st respondent has been affirmed by the learned single Judge in the writ petition. We do not find any irregularity or illegality in the finding of the learned single Judge and the same does not call for any interference in the present appeal. Present appeal, in the circumstances, is dismissed. Consequently, C.M.P. No. 11716/99 is also dismissed."

We have also perused the grounds of appeal filed in W.A. No. 1190 of 1999. The appellant has not raised any ground in the writ appeal that G.O. Ms. No. 1834 dated 29.10.1983 is not at all applicable to the present case and the Government is precluded from relying on the said G.O. The said ground is taken for the first time only in this Court saying that the entitlement from exemption should have been decided in accordance with law that existed in the assessment year for which the exemption was sought and not in accordance with any subsequent Government Order. Ground No. 12 taken in the writ appeal needs special mention in this context which reads as follows:

"In any event, the learned judge ought to have permitted the appellant to satisfy the requirements of G.O. Ms. 1834 Revenue dated 29.10.1983 as submitted as an alternative prayer by the appellant's counsel during the course of his arguments."

In the matter of exemption, under the provisions of Tamil Nadu Land Tax Act, there is a marked difference between Sections 27 and 29 of the Act. Sections 27 and 29 of the Act read as under:

27. Power of Government to exempt or reduce urban land tax.-

(1) The Government, if satisfied that the payment of urban land tax in respect of any class of urban lands or by any class of persons will cause undue hardship, they may, subject to such rules as may be made in this behalf, by order-

(a) exempt such lands or persons from the payment of the urban land tax; or

(b) reduce the amount of such urban land tax whether prospectively or retrospectively.

(2) The Government may at any time cancel or modify any order issued under sub-section (1) and upon such cancellation or modification, the entire amount of urban land tax, or the amount of

urban land tax due under the modified order, as the case may, shall be payable in respect of the land concerned with effect from the fasli year in which such cancellation or modification is made:

Provided that no such cancellation or modification shall be made unless the party likely to be affected by such cancellation or modification has had a reasonable opportunity of making his representations.

29. Exemptions.- Nothing in this Act shall apply to-

- (a) any urban land owned by the State or the Central Government;
- (b) any urban land owned by \026

- (i) the Corporation of Madras;

- (ii) a Municipal Council constituted under the Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920);

- (iii) A Township Committee constituted under the Mettur Township Act, 1940, (Tamil Nadu Act XI of 1940) the Courtallam Township Act, 1954 (Tamil Nadu Act XVI of 1954), the Bhavanisagar Township Act, 1954, (Tamil Nadu Act XXV of 1954) or section 4 of the Tamil Nadu Panchayats Act, 1958 (Tamil Nadu Act XXXV of 1958) or under any other law for the time being in force.

- (iv) a Panchayat or Panchayat Union Council constituted under any law for the time being in force;

- (c) any urban land owned by a religious institution, which is set apart for public worship and is actually so used, including any urban land owned by such institution and which is appurtenant thereto but not including any urban land owned by such institution and \026

- (i) which is vacant, or

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

- (d) (i) any urban land on which hospitals maintained by \026

- (a) the Government, any local authority or such other authority specified by the Government in this behalf; or

- (b) by any private institution which is in receipt of grant either from the Central Government or from the State Government;

have been constructed and any urban land appurtenant to such hospitals; or

- (ii) any urban land used for purposes directly connected with such hospitals, but not including any urban land \026

- (a) which is vacant, or

- (b) in which buildings, from which income is derived have been constructed.

Explanation.- For the removal of doubts, it is hereby declared that the urban land on which staff quarters including nurses quarters or any other buildings directly connected with the purposes of the said hospitals have been constructed shall be deemed to be urban land used for purposes directly connected with the said hospitals;

- (e) any urban land solely used for purposes connected with the disposal of the dead;

- (f) roads or urban lands used for communal purposes;

- (g) any urban land used for public purposes, provided that no rent is

charged for, or no remuneration is derived from, such user;

(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 and \026

(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 recognized 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 playgrounds attached to such schools, colleges or universities, shall be deemed to be urban land used for the purposes directly connected with education;

(i) any urban land used for public parks, public libraries and public museums;

(j) any urban land used \026

(i) for charitable purposes of sheltering destitute persons or animals;

(ii) for orphanages, homes and schools for the deaf and dumb and for the infirm and diseased;

(iii) for asylum for the aged and for fallen women;

(k) subject to the provisions of this section, any urban land actually used for religious, charitable or philanthropic purposes by such religious, charitable or philanthropic institutions, as the Government may, by notification, specify, but not including any urban land owned by such institutions and \026

(i) which is vacant, or

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

(l) any urban land used for the preservation of ancient monuments."

While under Section 29, the exemption is granted by the statute itself and is automatic in respect of the urban lands owned by the authorities or institutions referred to therein, the exemption under Section 27 is not so. For exemption under Section 27, power is vested with the State Government to exempt the lands or persons from payment of tax "if the Government is satisfied that the payment of urban land tax \005\005would cause undue hardship". Such power can be exercised by the Government only on specific application by the person or institution seeking exemption and on placing satisfactory material for exercise of such power. The exemption under Section 27 is not a matter of right and does not follow as a matter of course.

No other contention was raised. There is absolutely no merit in the civil appeals. The appellant is not entitled to exemption from payment of urban land tax during the period 1965-1976 as prayed for.

The appeals are accordingly dismissed. No costs.