



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 23RD DAY OF MAY, 2023

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 87922 OF 2012 (LB-TAX)

BETWEEN:

THE CITY MUNICIPAL COUNCIL
REPRESENTED BY THE COMMISSIONER
CMC,
BIJAPUR-586101

...PETITIONER

(BY SRI. AMRESH S ROJA., ADVOCATE)

AND:

AKBARPATEL
S/O SHAMSHUDDINPATEL PATIL
OCC. HONORARY GENERAL SECRETARY
SECAM ASSOCIATION
BIJAPUR-586101

...RESPONDENT

(BY SRI. AMEET KUMAR DESHPANDE SR. COUNSEL FOR
SRI. GANESH S KALABURAGI.,ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION IN NATURE OF CERTIORARI, BY QUASHING ANNEXURE-D, VIZ, THE IMPUGNED ORDER DATED 27/08/2012, PASSED BY THE II ADDITIONAL SESSIONS JUDGE, BIJAPUR, IN CRL REVISION PETITION NO.139/2012 ALLOWING THE CRIMINAL REVISION PETITION NO.139/2012 AND ETC.

THIS WRIT PETITION, COMING ON FOR HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:





ORDER

1. The petitioner is before this Court seeking for the following reliefs:-

- a. *Issue writ, order or direction in nature of certiorari, by quashing Annexure-D, viz, the impugned order dated 27/08/2012, passed by the II Additional Sessions Judge, Bijapur, in Crl Revision Petition No. 139/2012 allowing the Criminal Revision Petition No.139/2012*
- b. *Any type of writ or order or direction may be passed as deemed fit on the facts and circumstances of case in interest of justice and equity.*

2. The petitioner - City Municipal Council is aggrieved by the order passed by the II Additional Sessions Judge, Bijapur in Crl.Revision Petition No.139/2012. The petitioner, the erstwhile City Municipal Council is now upgraded to a Municipal Corporation. At the relevant point of time, it was a City Municipal Council operating under the provisions of the Karnataka Municipalities Act, 1964 (for short, 'the Act of 1964').

3. The petitioner had issued a demand notice on 11.01.2012 under Section 142(1)(v) of the Act of 1964 calling upon the respondent to make payment



of arrears of municipal tax of Rs.38,79,674/- for the period commencing from 01.04.2002 to 31.03.2012.

4. It is aggrieved by the same that the respondent had preferred an appeal in Cri.Appeal No.134/2012 under Section 150 of the Act of 1964 before JMFC-I, Bijapur. The said Appeal came to be dismissed on the ground that there was a delay in filing the appeal and that the respondent had not obtained exemption from the CMC for the aforesaid period. Aggrieved by the same, the respondent preferred a Criminal Revision Petition No.139/2012, which came to be allowed by the II Additional Sessions Judge, Bijapur, holding that in terms of Section 94(1-A)(i) of the Act of 1964, the respondent who is an educational institution is exempted from payment of property taxes. It is aggrieved by the same, the City Municipal Council is before this Court seeking for the aforesaid reliefs.



5. Sri.Amresh S.Roja, learned counsel for the petitioner would submit that:

5.1. There is no blanket exemption which is available to an educational institution in terms of Section 94(1-A)(i) of the Act of 1964 and it is required that necessary application is made by an assessee to the CMC for grant of such exemption on a year to year basis which has to be considered by the CMC and if found satisfying the relevant criteria, exemption certificate could be issued by the CMC and in this regard, he relies upon the decision of Co-ordinate Bench of this Court in the case of ***Society of Jesus and another vs. Bangalore Mahanagar Palike and others***¹ more particularly Para 9 thereof, which is reproduced hereunder for easy reference:

9. Now, one other question that is required to be adverted to is, what is the procedure that is

¹ ILR 2002 KAR 94



required to be followed for grant of exemption from payment of property tax under Section 110(e) of the Act? If one looks into the Scheme, Section 103(b) of the Act provides for tax on buildings or lands or both situated within the municipal limits. Such tax is described as 'property tax'. Section 108 of the Act mandates the Corporation to levy the property tax on all buildings and lands within the limits of the Corporation if the Corporation has resolved to levy the property tax, except such of those buildings or lands exempted by or under the Act or any other law. Therefore, I am of the view that it is reasonable to hold that the institution/person who seeks exemption under Section 110(e) of the Act, should make a written request every year before the Assessing Authority of the Corporation; and if such a request is made, the Assessing Authority is under an obligation to consider the same and pass appropriate orders on the merits of the claim before proceeding to assess the tax in respect of the building/land of such an institution/person.

5.2. He submits that without such exemption certificate not being obtained by the assessee, the assessee cannot on its own claim exemption from making payment of property tax. Thus, he submits that the judgment rendered by the Revisional Court is contrary to the applicable law and therefore, required to be set aside.



6. Sri.Ameet Kumar Deshpande, learned Senior Counsel for the respondent would submit that

6.1. In terms of Section 94(1-A)(i) of the Act of 1964, exemption is provided for all educational institutions. This exemption being absolute, the question of applying for any exemption certificate would not at all arise and as such, he submits that there being no dispute as regards the respondent running an educational institution, there is an automatic exemption under Section 94(1-A)(i) of the Act of 1964.

6.2. On these grounds, he submits that the order passed by the Revisional Court is correct and does not require any interference.

7. Heard Sri.Amresh S.Roja, learned counsel for the petitioner, Sri.Ameet Kumar Deshpande, learned Senior Counsel for the respondent and perused papers.



8. A short question that would arise for consideration in the present matter is whether under Section 94(1-A)(i) of the Act of 1964, is an application required to be made by an educational institution for exemption from making payment of property tax on a year to year basis?
9. Section 94(1) and Section 94(1-A) of The Karnataka Municipalities Act, 1964 are reproduced hereunder for easy reference:

94. Taxes which may be imposed.—(1) Subject to the general or special orders of the Government, a municipal council,-

(a) [xxx]

(b) [xxx] at rates not exceeding those [specified in this Act] may levy any one or more of the following taxes:—

[(i) a tax on buildings or vacant lands or both situated within the municipal area (hereinafter referred to as property tax)]

(ii) x x x]

(iii) [xxx]

(iv) [xxx]



(v) to (vii) x x x]

(viii) and (ix)]

[(x) x x x] 1

[(xi) x x x] 1

(xii) a duty on transfers of immovable property in the shape of an additional stamp duty;

(xiii) a tax on advertisements (other than advertisements published in newspapers) erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or displayed to public view in any manner whatsoever visible from a public street or public place (including any advertisement exhibited by means of cinematograph):

Explanation 1.—The word "structure" in this sub-clause includes any movable board on wheels used as an advertisement or an advertisement medium;

Explanation 2.—'public place' for the purpose of this sub-clause, means any place which is open to the use and enjoyment of the public, whether it is actually used or enjoyed by the public or not;

Explanation 3.—The word "advertisement" in this sub-clause means any word, letter, model, sign, placard, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or in part for the purpose of, advertisement, announcement or direction;

Section: 94(1-A) The following buildings and vacant lands shall be exempted from the property tax, namely:-

(a) places set apart for public worship and either actually so used or used for no other purpose;

(b) choultries for occupation of which no rent is charged and choultries the rent charged for the



occupation of which is used exclusively for charitable purpose;

(c) 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 State Government

(d) such ancient monuments protected under the Karnataka Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1961 (Karnataka Act 7 of 1962) and Ancient Monuments and Archaeological Sites and Remains Act, 1958 (Central Act 24 of 1958) or parts thereof as are not used as residential quarters or public offices;

(e) charitable hospitals and dispensaries but not including residential quarters attached thereto;

(f) such hospitals and dispensaries maintained by railway administration as may from time to time be notified by the State Government, but not including residential quarters attached thereto;

(g) burial and cremation grounds included in the list published by the Municipal Commissioner or Chief Officer;

(h) Government lands set apart for free recreational purposes and such other Government land as may be notified by the Government which in the opinion of the State Government no income could be derived;

(i) buildings or vacant lands exclusively used for,-

(i) student hostels, which are not established or conducted for profit;

(ii) educational purposes by recognized educational institutions;

(j) buildings or vacant lands belonging to the Central Government or any State Government used



for the purposes of Government and not used or intended to be used for residential or commercial purposes;

(k) buildings or vacant lands belonging to the Bangalore Development Authority, the Karnataka Housing Board, the Urban Development Authorities constituted under the Karnataka Urban Development Authorities Act, 1987 or any local authority, the possession of which has not been delivered to any person, in pursuance of any grant, allotment or lease;

(l) land which is registered as land used for agricultural purpose in the revenue accounts of State Government and is actually used for cultivation of crops;

Provided that nothing contained in clauses (a), (c) and (e) shall be deemed to exempt from property tax, any building or vacant land 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 for the purposes of clause (j), a certificate issued by the Government or any officer duly authorised by the Government that any building or land is used for the purposes of the State Government and not used or intended to be used for residential or commercial purposes shall be binding on the municipal council.

10. A perusal of the said provision does not indicate the requirement of any certificate as contended by Sri.Amresh Roja, learned counsel for the petitioner insofar as the exemption claimed is under Section 94(1-A)(i) of the Act of 1964. It is only as



regards the exemption contained under Section 94(1-A)(a, c and d) of the Act of 1964 that certain conditions are to be satisfied and insofar as the exemption under Section 94(1-A)(j) of the Act of 1964, a certificate is required to be issued by the Government or any officer duly authorized by the Government that a building or vacant lands belonging to the Central Government or any State Government is used for the purposes of the State Government and not used for any residential or commercial purposes. Section 94 (1) or Section 94(1-A) of the Act of 1964 does not require any certificate to be issued by any authority.

11. Insofar as the decision in ***Society of Jesus's***¹ case supra referred to by Sri.Amresh S.Roja, learned counsel for the petitioner, the said decision is rendered under the provisions of the Karnataka Municipal Corporation Act, 1976 (for short, 'the Act of 1976') and is not one which is rendered under the



provisions of Karnataka Municipalities Act, 1964. It is therefore required for this Court to take into consideration the requirement of Section 94(1) and Section 94(1-A) of the Act of 1964, which stands on a different footing than Section 108 and Section 110(e) of the Act of 1976, which was the subject matter of ***Society of Jesus***¹ case supra.

12. Be that as it may, in Para 10 of the said decision, the Co-ordinate Bench of this Court has also held that merely because an application is not filed by an assessee in advance seeking exemption, the same would not be a ground to deprive the assessee of such exemption if and so were the eligibility of the assessee. Thus, the decision in ***Society of Jesus***¹ case supra *per se* does not even though it relates to the applicability of the Karnataka Municipal Corporation Act require an assessee to have obtained an exemption prior to the assessment or filing of the returns.



13. In the present case, there is no dispute as regards the respondent running an educational institution and therefore, there cannot be any dispute as regards the respondent coming within the purview of Section 94(1-A)(i) of the Act of 1964. Such being the case, there being no requirement for seeking for an exemption certificate, I am of the considered opinion that this exemption is absolute and apply to all buildings which are used for the purpose of running educational institution and/or incidental activity as held by this Court in W.P.No.103010/2013 in the case of the Management of NWKRTC vs. Dilerkhan S/o Munawarkhan Jahagirdar dated 15.01.2021.

14. In view of the above discussion, the exemption to an educational institution as regards payment of property tax being provided under Section 94(1-A)(i) of the Act of 1964, the Revisional Court has rightly applied the same and revised the order passed by



the JMFC-I, Bijapur exempting the payment of property tax by the respondent.

15. There being no error in the said order, I do not find any reason to interfere with the same. The Writ Petition stands dismissed.

**Sd/-
JUDGE**

PRS
List No.: 1 Sl No.: 52