

The Mouna Mutt, Rock Fort, Tiruchirapalli Vs The Asst. Commissioner, Urban Land Tax, Tiruchirapalli and State of Tamil Nadu

Court: Madras High Court

Date of Decision: April 18, 1988

Acts Referred: Tamil Nadu Urban Land Tax Act, 1966 & Section 27, 27(1)

Hon'ble Judges: Swamikkannu, J

Bench: Single Bench

Advocate: B. Kumar, for the Appellant; R. Lokapriya, Government Advocate for (taxes), for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Swamikkannu, J.

It is submitted on behalf of the petitioner that the subject of the trust is religious in nature and when there is no proof to

show that it is of irreligious or non-charitable in nature, then the presumption is that the trust is one which is of a religious and charitable nature. In

the instant case, in the affidavit sworn to by the Manager of the Dharmapuram Adheenam it is averred that the writ petition is filed for the issue of a

certiorarified mandamus to quash the order of the 2nd respondent made in letter No. 92916/U2/81-1 dated 23-1-1982 and for a mandamus to

direct the second respondent to grant full exemption from payment of urban land tax for the urban lands owned by the petitioner-trust situate in

Trichy District. It is inter alia stated in the affidavit that the petitioner Mouna Mutt is an ancient religious institution founded by Mounaswamigal who

was one of the disciples of Dharmapuram Adheenam in the 18th century, the hereditary trustee being the adhinakarthar of Dharmapuram

Adheenam. Almost all the properties of the petitioner trust are agricultural lands endowed to it in ancient times. There are about 12 grounds situate

in Town survey Nos. 105, 138 to 193 in Tiruchy Town. These lands would come under the Urban Land Tax Act, 1966. The income derived from

these lands is also utilised exclusively and wholly for the performance of religious objects of the trust. The trust has no object which is not religious

or charitable in nature. The urban lands belonging to the petitioner are under the occupation of about 18 persons who have put up various

structures and buildings on the land and are paying only paguthi to the petitioner-trust, Most of them are only trespassers and they are never regular

in payment of any money even towards damages for use and occupation. The petitioner is not able to realise even a small portion of the amount

due from them. For example, for fasli 1389, Rs. 4262.25 representing nearly 90% of the rent due from them was in arrears. Whatever income that

is realised is being applied to for the purpose of the trust. The first respondent has imposed Urban Land Tax on the land held by the petitioner at

the rate of Rs. 1288.50 per fasli from 1-7-1975. This is an unbearable burden on the petitioner trust is not able to realise any amount from the

land. These are the submissions made by Mr. B. Kumar, learned counsel for the petitioner. The only point for consideration, is whether the lands in

question can be exempted from the imposition of tax as prayed for by the petitioner?

2. The first and foremost point that requires elucidation is, whether the object of the trust is exclusively religious and charitable in nature or not? In

this view, since no counter has been filed, we have only to depend on the affidavit that has been filed on behalf of the petitioner sworn to by the

Manager of the Dharmapuram Adheenam. In this view, it is seen that the categorical assertion on the part of the petitioner is that the income from

the land is exclusively used for religious and charitable purposes of the trust. The action resorted to by the authorities is not in consonance with the

principles of law. What is expected of the Enquiry Officer is, whether the income is utilised for religious and charitable purpose. In this view, there

seems to be no ground for the authorities to have resorted to passing orders which are certainly liable to be quashed. They have not followed any

principle governing the determination as to whether the land in question is one which can be exempted or not. In this view G.O. Ms. No. 1947

dated 17th September, 1976 lays down the guidelines and the rules which reads as follows:-

The levy of tax on urban lands was brought into effect in the first instance in Madras City from Fasli 1373 i.e., from 1-7-1963) by the enactment of

the Tamil Nadu Urban Land Tax Act, 1966 (Tamil Nadu Act 12 of 1966). Since then, the Act has been amended from time to time and the levy

of tax has been extended to the urban lands in the City of Madurai and in the Municipal Towns of Coimbatore, Tiruchirapalli and Salem besides

the Madras City Belt area. The structure of tax has also undergone changes from time to time, the last of such changes having been introduced by

the Tamil Nadu Urban Land Tax Amendment Act 1975 (Tamil Nadu Act 49 of 1975) which came into effect on and from the 1st July, 1975. The

objects of the Act are to argument the resources of the State to carry out the Slum Clearance Scheme, for housing schemes relating to tow income

groups in the State etc., In the Act certain concessions have been provided statutorily for educational, religious, charitable and philanthropic

institutions by way of exemption from the levy of tax in respect of certain lands of such institutions. However, representations have been received

from such institutions to the effect that the urban land tax levied on them, even after such concession is casting a burden on the institutions and that

with the income they derive from their building properties on the urban lands and otherwise they have not been able to meet the commitments

connected with the objects of these institutions. Other institutions like Community Recreational Centres, Clubs, etc., which have no profit motive

and commercial institutions like cinema studios and cinema theatres have also made representations for concessions in the levy of urban land tax.

The Government have carefully considered the representations of these institutions and they have decided to grant certain exemptions and

concessions by way of reductions of urban land tax, in respect of such institutions directions as follows:-

(1) Total exemption from the payment of the urban land tax be given to all the educational, religious; charitable and philanthropic institution both in

respect of vacant lands and lands on which buildings have been constructed and from which the institutions derive income which is being used

solely on the objectives and purposes of such institutions.

2. The exemption granted under sub-paragraph (1) shall be with retrospective effect on and from 1st July, 1975, namely, the date on which the

Tamil Nadu Urban Land Tax (Amendment) Act, 1975 (Tamil Nadu Act 49 of 1975) came into force.

3. The exemption granted in the foregoing subparagraphs shall be subject to the condition that when the institution concerned disposes of the

vacant lands by sale, gift, etc., it has to pay to the Government of entire amount of urban land tax payable from 1st July, 1975 upto the date of such

alienation but for the exemption granted under sub-paragraph (1).

4. The urban land tax be reduced by 50 (fifty) percent in respect of both vacant lands and built up areas belonging to community recreational

centres, clubs, etc., and this concession will operate with retrospective effect on and from the 1st July, 1975.

5. The Urban Land Tax be reduced by 50 (fifty) per cent in respect of cinema studios both for vacant land and built-up land and this concession

will operate with retrospective effect on and from the 1st of July, 1975; and,

6. In respect of cinema theatres, no exemption will be given and full tax as per the Act, as amended, be levied.

III. The Government have also decided that to give effect to the concessions mentioned above the Tamil Nadu Urban Land Tax Act, 1966 (Tamil

Nadu Act 17 of 1966) as amended, need not be further amended and that these concessions may be given in exercise of the powers of the

Government under S.27 of the Act.

IV. The concession given above are applicable only so long as the urban land is specifically used for the purpose of the institution concerned. If

there is any violation in the use of division of the income derived from the urban land, the entire urban land tax will be levied as provided in the Act.

In view of this assessment of the provisions of the Act including the cases for which total exemption from the urban land tax may be given.

V. The Government have also decide that a committee called the ""Empowered Committee"" my be constituted to examine and make

recommendations to the Government regarding cases for the above concessions. The Government direct that the ""Empowered Committee"" be

constituted with the Officers mentioned below.

1. Chief Secretary to Government-Chairman.
2. Member of the Board of Revenue in charge of the subject ""Urban Land Tax"". Member.
3. Secretary to Government, Finance Department.
4. Secretary to Government, Revenue Department.

The Deputy Secretary to Government in the Revenue Department in charge of the subject "Urban land Tax" shall function as the Secretary to the

"Empowered Committee".

IV. The ""Empowered Committee"" will examine and accommened to the Government the clause of persons (vide S.27(1) of the Act falling under

the specified categories who have to be given exemption from or reduction of, urban land tax as per the decision indicated in paragraph 2 above.

VII. The Government direct that the ""Empowered Committee"" mentioned above may go into the other class of cases where exemption from or

reduction in urban land tax would be Justified and make suitable recommendations to the Government.

VIII. The case of industrial establishment for grant of exemption or concession in the matter of levy of urban land tax will be examined and order

issued separately.

IX. This order issues with the concurrence of the Finance Department vide U.O. No. 3182/F8/76 dated 16-9-1976.

A careful reading of the above order clearly shows as to how the authorities have to approach the question viz. the purpose for which the income

from the land is utilised. In the instant case, there seems to be no discussion on that aspect and as such the order impugned has necessarily to be

quashed. The authorities concerned are directed to apply the principles involved in the above G.O. as well as the rules relating to the determination

of the purpose for which the income derived from the land is utilised-whether it is utilised for charitable and religious purpose or not In this view,

the authorities are made known of the ratio decidendi in Mr. Kunjan Chettiar Trust Through its Hereditary Trustee S. Kuppuswami Chettiar v.

State of Tamil Nadu 1980 T.N.L.J. 491 at 496. Bearing these aspects in mind the authority concerned has to dispose of the matter within two

months from today. The petitioner should also approach the authority immediately and put forth his case either by way of oral or documentary

evidence and substantiate his case for exemption. The petitioner has to prove as to how much income he is deriving from the land and the

percentage of the income utilised for charitable and religious purposes and prove his case that the land in question is eligible for exemption. The

Writ petition is allowed. But there will be no order as to costs.