

(2003) 6 AWC 4986 : (2003) 3 UPLBEC 2642

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No. 55540 of 2002

Sophia Girls School

APPELLANT

Vs

Cantonment Board and
Another

RESPONDENT

Date of Decision: Sept. 16, 2003

Acts Referred:

- Cantonments Act, 1924 - Section 94, 94A, 99(2)
- Constitution of India, 1950 - Article 226

Citation: (2003) 6 AWC 4986 : (2003) 3 UPLBEC 2642

Hon'ble Judges: Sunil Ambwani, J; M. Katju, J

Bench: Division Bench

Advocate: Nitin Sharma and U.N. Sharma, for the Appellant; Samir Sharma, for the Respondent

Final Decision: Allowed

Judgement

M. Katju, J.

Heard Sri U.N. Sharma and Shri Nitin Sharma for the petitioners and Shri Samir Sharma for the respondents.

2. By these writ petitions, the petitioners, who are running and Managing Education Institutions namely Sophia Girls School and St. Mary's Academy at Meerut Cantt. have prayed for quashing the impugned auction notice dated 21.12.2002, published in the Newspaper "Dainik Jagran" for realization of house tax by the Cantonment Board, Meerut and have prayed for a writ of mandamus restraining respondents from realizing any property tax from the petitioners.

3. It is alleged in Para 3 of the petitions that the petitioners are minority institutions imparting education up to Class 12th and are run by Christian Missionaries on "no profit and no loss" basis, and they are not getting aid either from the State Government or from

the Government of India. They are managing their financial affairs on their own. The Cantonment Board assessed and demanded house tax and water tax from the petitioners. Petitioners paid house tax from 1996 to 2000, under protest. The Cantonment Board, Meerut sent notices dated 17.7.2002 and 12.8.2002, respectively in respect of the Sophia Girls School and St. Mary's Academy raising demand of Rs. 19,04,357/- and Rs. 66,13,866/-respectively. Against these notices the petitioners filed appeals. During the pendency of the appeals, the Cantonment Board attached the property of the petitioners for realization of the tax and issued the impugned advertisement for sale of the School buildings and properties in pursuance of Sections 94 and 94A of the Cantonment Act, 1924 (hereinafter referred to as the Act).

4. It is contended by Sri U.N. Sharma, learned Counsel for the petitioners that the buildings use for educational purposes are exempt from any tax on property other than the tax imposed to cover the cost of specific services rendered by the Board. According to him Section 99(2)(b) provides for such exemption. Section 99(2)(b) is quoted below :

"99. Exemption in the case of Buildings.-

(2) the following buildings and lands shall be exempt from any tax on property other than a tax imposed to cover the cost of specific services rendered by the Board, namely :-

(b) buildings used for educational purposes and public libraries, play-grounds and dharamshalas which are open to the public and from which no income is derived."

5. The petitioners have alleged that the petitioner institutions are exempt from property tax u/s 99(2)(b) of the Cantonment Act. It is alleged in Para 8 of Petition No. 55540 of 2002, that the petitioner Sophia Girls School first received a notice on 3.8.1996 demanding property tax of Rs. 11,68,624/-, which it deposited under protest. Thereafter also it received demands up to 2000, details of which are given in Para 8 of the Writ Petition No. 55540 of 2002, the total amount demanded being Rs. 16,92,905/-. In the year 2002, also the petitioner received a demand notice dated 17.7.2002, demanding a sum of Rs. 19,04,357/-. Against that demand the petitioner filed an appeal u/s 84/87 of the Cantonment Act, 1924. Photocopy of the demand notice dated 17.7.2002, is Annexure-2 to the Writ Petition No. 55540 of 2002.

6. It is alleged in Para 10 of the aforesaid writ petition that for realization of taxes a mechanism has been provided in the Act, but without following that procedure, a notice was published on 21.12.2002, in the Daily Newspaper "Dainik Jagran" stating that the building of the petitioner has been attached and will be auction sold vide Annexure-3 to the Writ Petition No. 55540 of 2002, A revised notice was also issued demanding property tax of Rs. 55.00 lacs vide Annexure-4 to the writ petition.

7. Aggrieved Writ Petition No. 55540 of 2002, has been filed.

8. In Writ Petition No. 55541 of 2002, St. Mary's Academy v. Cantonment Board, the allegations are similar to those in Writ Petition No. 55540 of 2002. However, a perusal of Paragraphs 8 to 11 of the writ petition show the total amount demanded from the petitioner as property tax is Rs. 1,84,000,00/- (one crore eighty four lacs).

9. In the counter-affidavits in both the writ petitions it has been stated that in the educational institutions are not entitled to exemption from tax. It is further alleged that due process of law under Sections 91 92 and 93 of the Cantonment Act, has been followed.

10. In Para 15 of the counter-affidavit it is alleged that since the petitioner has already filed an appeal this Court should not exercise jurisdiction under Article 226 of the Constitution. It is further alleged that the Supreme Court has decided the controversy by judgment dated 5.2.1996.

11. We have also perused the rejoinder-affidavits.

12. In Para 14 of the same it is stated that the judgment of the Supreme Court of the [St. Mary's School and others etc. Vs. Cantonment Board, Meerut and others](#), involved a totally different controversy. We have perused that decision and we agree with the petitioners that it does not deal with the question whether property tax can be imposed on them.

13. In our opinion, it is in the interest of justice to decide the controversy as to whether the petitioners are liable to pay property tax or not. No doubt, the petitioners have filed appeals but it is well-settled that alternative remedy is not an absolute bar to the invocation of writ jurisdiction under Article 226 of the Constitution, as held by the Supreme Court in State of U.P. v. Mohd. Nooh AIR 1958 SC 86. It has been held in that decision that "the rule requiring the, exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law, and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

14. In Mohd. Nooh's case; the Supreme Court has even observed (Vide Para 11), that a writ can even be issued where a party has availed of his alternative remedy.

15. The learned Counsel for the petitioner has referred to various decision e.g., M/s. Canon India Pvt. Ltd. v. State of U.P. 2003 UPTC 10; Hindustan Aluminium Corporation Ltd. v. State of UP. 1977 UPTC 81 : (1978) 41 STC 147 ; [Union of India \(UOI\) and Another Vs. State of Haryana and Another](#), and [The General Manager, Southern Railway, Madras and Another Vs. T.M. Paramasivam](#), etc., where it was held that where the controversy is a purely legal one or is likely to be of a recurring nature and it does not involve disputed questions of fact but only questions of law then it should be decided by the High Court instead of dismissing the writ petition on the ground of an alternative remedy. The question whether property tax can be imposed on educational institutions is certainly of a recurring nature, and hence should be decided.

16. On the facts of the present case, we are of the opinion that in view of the huge and exorbitant demands of the respondents and their recurring nature, this Court under Article 226 should decide finally whether the petitioner is liable to pay property tax at all, and should not relegate the petitioners to their alternative remedy of appeal, otherwise the petitioners and other educational institutions would be put to a great deal of harassment.

17. We have already quoted Section 99(2)(b) of the Cantonment Act. While it has been stated in Para 3 of the writ petitions that the petitioner institutions run on "no profit and no loss" basis, in Para 5 of the counter-affidavits this allegation is denied and, it is alleged that the Schools are being run on commercial basis and huge amount of fee is being charged from the students.

18. It may be noted that Para 5 of the counter-affidavit has not been sworn on personal knowledge but on the basis of record, and it is not stated in the counter-affidavit on what record this averment in Para 5 is based. However, in our opinion, it is not necessary to enter into the controversy as to whether the petitioner institutions are being run on commercial basis or not, since in our opinion, on a correct interpretation of Section 99(2)(b) all buildings used for educational purposes are exempt from property tax, whether they derive income or not.

19. A careful perusal of the words used in Section 99(2)(b) shows that the words "which are open to the public and from which no income is derived" qualify only the words "public libraries, play-grounds and dharamshalas" and do not qualify the words "buildings used for educational purposes."

20. If the intention of the legislature was that the words "which are open to the public and from which no income is derived" also qualify the words "buildings used for educational purposes" then Section 99(2)(b) would have read as follows :-

"buildings used for educational purposes, public libraries, play-grounds and dharamshalas which are open to the public and from which no income is derived."

21. If the intention of the legislature was that the words "which are open to the public and from which no income is derived" were also to qualify the words "buildings used for educational purposes" then instead of using the word "and" after the words "educational purposes" the legislature would have only used a comma.

22. The use of the word "and" after the words "educational purposes", instead of simply using a comma, shows that the words "which are open to the public and from which no income is derived" were not meant to qualify buildings used for educational purposes. It follows from this interpretation that all buildings used for educational purposes, whether income is derived from the same or not, are exempt from property tax. In our opinion, buildings used for educational purposes fall in one category while, building used for public libraries, play-grounds and dharamshalas, fall in another category, and only the latter category is qualified by the last words in Section 99(2)(b). Such an interpretation which

we have adopted is also in consonance with common sense since almost all educational institution derive some income, however meager, and if a different interpretation to that which we have taken is resorted to then hardly any educational institution would be exempt from property tax. Surely that was not the intention of the legislature.

23. In [Sama Alana Abdulla Vs. State of Gujarat](#) , the Supreme Court considered the interpretation of Section 3(1)(c) of the Official Secret Act, 1923. Section 3(1)(c) reads as follows :-

"3. Penalties for spying.-(1) If any, person for any purpose prejudicial to the safety or interests of the State -

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(c) obtains, collects, records or publishes or communicates to any other person any secret official code or password or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be directly or indirectly, useful to an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State of friendly relations with foreign States."

24. The Supreme Court held that the word "secret" in clause (c) qualifies only the words "official code or password" and does not qualify the words "any sketch, plan, model, article or note or other document or information." This decision has been followed by the Supreme Court in the [The Government of N.C.T. of Delhi Vs. Jaspal Singh](#),

25. In view of the above interpretation which we have given, it is obvious that no property tax can be imposed from the petitioners and other educational institutions other than the tax imposed to recover the cost of specific services rendered by the Board. Since, the tax imposed itself illegal, the appeal filed by the petitioners become redundant.

26. The petition is allowed. Impugned demands of property tax as well as the impugned auction notices are quashed. Any amount of property tax already collected by the respondents shall be returned forthwith to the petitioners with interest at 12% per annum from the date of payment by the petitioners to the date of refund and this refund must be paid within two months from today.