IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2020

C O R A M

The Hon'ble **Mr. A.P.SAHI, THE CHIEF JUSTICE**
and
The Hon'ble Mr. Justice **SENTHILKUMAR RAMAMOORTHY**

W.A.Nos.582, 583, 584, 585, 587, 588, 589 and 590 of 2020
and
CMP.Nos.8221,8224,8225, 8227,8228,8229,8230 and 8231 of 2020

Gurukul Lutheran Theological College
and Research Institute
Rep. by its Principal
No.94, Purasawalkam High Road,
Kilpauk, Chennai – 600 010. ... Appellant/Petitioner
(in all writ appeals)

Vs.

1.The Commissioner
Corporation of Chennai,
Chennai – 600 003.

2.The Revenue Officer
Corporation of Chennai,
Zone 5, Kilpauk,
Chennai – 600 010. ... Respondents/Respondents
(in all writ appeals)

PRAYER IN W.A.No.582 of 2020: This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.34079 of 2007.

PRAYER IN W.A.No.583 of 2020: This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.33163 of 2007.

PRAYER IN W.A.No.584 of 2020: This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.33162 of 2007.

PRAYER IN W.A.No.585 of 2020: This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.33164 of 2007.

PRAYER IN W.A.No.587 of 2020: This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.33165 of 2007.

PRAYER IN W.A.No.588 of 2020: This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.33161 of 2007.

PRAYER IN W.A.No.589 of 2020: This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.34080 of 2007.

PRAYER IN W.A.No.590 of 2020: This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 11.06.2019 made in W.P.No.34081 of 2007.

For Appellant : Mr.Srinath Sridevan
(in all writ appeals)

For Respondents : Mrs.Karthika Ashok
(in all writ appeals)

COMMON JUDGMENT

SENTHILKUMAR RAMAMOORTHY J.,

These writ appeals are directed against the separate orders in W.P.Nos.34079, 34080, 34081, 33161, 33162, 33163, 16164 and 16165 of 2007, all dated 11.06.2009, by which the respective writ petition was disposed of by directing the Appellant in each of these writ appeals to pay the amount demanded therein as arrears of property tax within a period of eight weeks from the date of receipt of a copy of the order without interest

or penalty. In view of the fact that the Appellant in each of the writ appeals is the Gurukul Lutheran Theological College (the GTL College), the Respondents are also common, and the subject matter in all the cases relates to the imposition of property tax on the Appellant, the writ appeals were heard jointly and are disposed of this common judgment.

2. The GLT College, the Appellant herein, was established in the year 1927 and from the inception is stated to be engaged in imparting training and education in Christianity, Lutheranism, religion, i.e. theology, and communication. The GLT College was registered under the Societies Registration Act, 1860, on 18.06.1962. According to the Appellant, the GLT College functions from Door Nos.113/2 to 113 /6 and the GLT College boys and girls hostels from Door Nos.114/4 to 114/6, Purasawalkam High Road, Chennai - 600 010. From 1962, it is also stated that the above mentioned premises, including the hostel buildings, were not assessed to property tax because it is an educational trust and, therefore, entitled to exemption. This situation changed, for the first time, in September 2007, when notices demanding property tax were issued from Zone-5, Ward 70 under separate Bill Nos for each of the eight door numbers. This demand was in respect of

the second half of 1998 – 1999 to the first half of 2007 – 2008. According to the Appellant, the notices of demand were issued without providing an opportunity to the Appellant to object to the retrospective levy of property tax.

3.Therefore, the impugned demand notices were challenged by filing writ petitions. In the writ petitions, the Appellant raised several grounds of challenge. Significantly, one of the grounds of challenge was that buildings, which are used for educational purposes, including hostel buildings attached thereto, are exempted from property tax under Section 101(c) of the Chennai City Municipal Corporation Act, 1919 (the CCMC Act). In addition, the impugned demand was challenged on the basis that it relates to the period extending from the second half of 1998-1999 to the first half of 2007 – 2008, which is a period of about nine years. In spite of the claim being in respect of the arrears for a period of nine years, no prior notice was served specifying the reasons for the imposition of property tax.

4. The Chennai Corporation filed a counter affidavit in the writ petitions. In the counter affidavit, the Chennai Corporation stated that all the properties in Chennai City were re-assessed during the general survey of

1998 – 1999 with effect from the second half of the year 1998 – 1999. Accordingly, the properties of the Appellant herein were also re-assessed in the general survey. Such re-assessment was carried out as per the prescribed formula and therefore it was contended that the writ petitions are liable to be dismissed. The Writ Court considered the submissions of the learned counsel for the respective parties and concluded that the Appellant herein did not file an appeal against the enhancement of property tax and that the Appellant is mainly aggrieved by the demand of property tax without a notice. The learned Judge also noted that the demand is in respect of arrears of property tax and not a retrospective levy of property tax. On that basis, the Court concluded that there is no illegality or infirmity in the demand. Significantly, the learned Judge recorded the submissions of the learned counsel for the Appellant/Petitioner therein that the Appellant/Petitioner is ready to pay the amount within the stipulated time without interest or penalty. After recording the said submissions, the Court disposed of the writ petitions by directing the Appellant/Petitioner to pay the arrears of property tax in each of the cases within a period of eight weeks without interest or penalty. The said orders dated 11.06.2019 are impugned in these writ appeals.

5. We heard Mr.Srinath Sridevan, the learned counsel for the Appellant and Mrs.Karthika Ashok, the learned counsel for the Respondents.

6. The principal contention of Mr.Srinath Sridevan is that buildings used by educational and charitable institutions were exempted from the liability to pay property tax as per Section 101(c) of the CCMC Act as it stood at the relevant point of time. As regards the Appellant, he submitted that the demand for property tax pertains to buildings that are used by the Appellant either to impart theological education or to accommodate the students of the GLT College in the hostels attached to the GLT College. Each of the appeals and the preceding writ petitions related either to the College or hostel buildings. He further submitted that the plain language of Section 101(c), as it stood prior to amendment by the Tamil Nadu Municipal Laws (Second Amendment) Act, 2018, exempted buildings that are used for educational purposes, including hostels attached thereto. On this issue, he contended that Section 101 prescribed that " the following buildings and lands shall be exempt from the property tax". By virtue of the

language of Section 101, he submitted that the exemption from property tax is automatic and that an application for exemption is not necessary.

7.In support of this contention, he referred to and relied upon the judgment of the Hon'ble Supreme Court in **Agastyar Trust v. Commissioner & Secretary to Government Revenue Department and Another, (2005) 3 SCC 516 (Agastyar Trust).** He pointed out that the Hon'ble Supreme Court, in **Agastyar Trust,** compared and contrasted the language of Sections 27 and 29 of the Tamil Nadu Urban Land Tax Act, 1966 (the TN Urban Land Tax Act). Section 27 confers power on the TN Government to exempt lands or persons from the payment of property tax if it is satisfied that the payment of urban land tax in respect of the class of urban lands or persons would cause undue hardship. By contrast, Section 29 thereof prescribes that nothing in this Act shall apply to urban land owned by the classes of persons specified therein. By so comparing and contrasting the aforesaid provisions, the Hon'ble Supreme Court concluded that the exemption under Section 29 is automatic in respect of the urban lands owned by the authorities or institutions referred to therein, whereas the exemption under Section 27 is dependent on the Government being

satisfied that the payment of urban land tax would cause undue hardship to the persons or institutions seeking exemption. Therefore, the exemption under Section 27 is not automatic and requires that the persons claiming exemption should satisfy the Government that the imposition of urban land tax would cause undue hardship. Likewise, according to Mr.Srinath Sridevan, the language of Section 101(c) of the CCMC Act, as it stood at the relevant time, is comparable to Section 29 of the TN Urban Land Tax Act and indicates clearly that the exemption is automatic as regards the class of buildings specified therein.

8.He also relied upon the judgment of the Hon'ble Supreme Court in **Bharat Kala Bhandar Ltd v. Municipal Committee, Dhamangaon, AIR 1966 Supreme Court 249 (Bharat Kala Bhandar).** In that case, the company concerned had paid excess amounts to the Municipal Committee by way of tax and thereafter filed a suit for recovery of excess tax. In those facts and circumstances, the Hon'ble Supreme Court, by its majority opinion, concluded that the suits were maintainable and were not ousted under Section 48 of the Central Provinces Municipality Act, 1922. By relying on the said judgment, Mr.Srinath Sridevan submitted that his client

is on a stronger footing inasmuch as the Appellant challenged the demand before paying the tax whereas the Hon'ble Supreme Court concluded that a suit for recovery of tax is maintainable even if the tax was paid under a mistake. In addition, Mr.Srinath Sridevan relied upon the judgment in **Bonanzo Engineering and Chemical Private Limited v. Commissioner of Central Excise, (2012) 4 SCC 771 (Bonanzo Engineering),** wherein the Hon'ble Supreme Court dealt with an exemption notification under the Central Excise Tariff Act, 1985. As per the said notification, the goods enumerated in the schedule thereto were exempt from the payment of central excise duty for the first clearance of the goods up to an aggregate value not exceeding Rs.30 lakhs. The matter was agitated at various levels up to the Tribunal and the Tribunal rejected the claim on the ground that the assessee had not claimed the refund of the duties paid and, therefore, is not entitled to exemption. The said conclusion of the Tribunal was rejected by the Hon'ble Supreme Court by referring to and relying upon the judgment in **Union of India and others v. Wood Papers Limited and Another (1990) 4 SCC 256 (Wood Papers)** and **Associated Cement Company Limited v. State of Bihar and Others (2004) 7 SCC 642.**

9.The learned counsel also relied upon **Satya Narain Pandey v. State of U.P. And Others (1988) 1 SCC 492 (Satya Narain Pandey),** wherein the Hon'ble Supreme Court examined the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, which provided for exemption under Section 2(1). Under the said exemption provision, two types of exemptions were granted, either based on the owner of the building or the actual or intended use of the building. Upon considering and construing Section 2(1), the Hon'ble Supreme Court held in paragraphs 12 to 15 thereof that clauses (a) and (b) of Section 2(1) exempted buildings that are owned by the specified class of persons whereas clauses (c) to (e) exempted buildings that are either actually used or intended to be used for the purposes specified therein. By construing these provisions, it was concluded that the exemption would apply even to buildings that are intended to be used by the prospective tenant for the purposes specified in clauses (c) to (f). The last judgment that was relied upon was **Amalgamated Coalfields Ltd and others v. Janapada Sabba, Chhindwara, AIR 1961 SC 964,** wherein a Constitution Bench of the Hon'ble Supreme Court concluded that acquiescence in the payment of an illegal tax for a long time is not a ground to deny relief to the petitioners.

By relying upon the aforesaid judgment, Mr.Srinath Sridevan contended that the Appellant herein had raised the ground that buildings used for educational purposes are exempted from property tax in the grounds raised in the writ petition and, therefore, notwithstanding the fact that this was not argued before the learned single Judge, the Appellant is entitled to the exemption.

10. On the contrary, Mrs.Karthika Ashok submitted that the Appellant/Petitioner agreed to pay the amount demanded towards property tax in respect of each of the buildings (either College or hostel) and that this is abundantly clear from paragraphs 6 and 7 of the order of the Writ Court. In fact, she submitted that the learned single Judge directed that the Appellant shall pay the arrears without interest or penalty because the Appellant agreed to pay the amount demanded as property tax. Consequently, she submits that the order of the learned single Judge is not liable to be interfered with.

11. With regard to the exemption, she submitted that the exemption is available only in respect of buildings that are used for

educational purposes. Therefore, it is necessary for the person claiming exemption to establish that the buildings were actually used for educational purposes. She further submitted that some of the buildings are used as hostels and the Appellant is collecting hostel fees. Consequently, the exemption would not apply as per the second proviso to Section 101 of the CCMC Act.

12. By way of rejoinder, Mr.Srinath Sridevan submitted that the concession made by the then counsel for the Appellant does not amount to a waiver of the right to claim an exemption especially when the Appellant has raised a specific ground in this regard in the writ petition. It also does not set up an estoppel because there cannot be an estoppel against law.

13. We considered the submissions of the learned counsel for the respective parties and examined the materials on record.

14. The main question that arises for consideration is whether the Appellant is entitled to an exemption from property tax in respect of the

buildings used for the college and hostel notwithstanding the specific facts and circumstances of the case.

15. For this purpose, it is necessary to examine Section 101(c) of the CCMC Act as it stood at the relevant time. The said provision was as under:-

> "**101 General Exemption:-** The following buildings and lands shall be exempt from the property tax.
>
> (c) Building used for education 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 eumb, asylum for the aged and fallen women and such similar institution run purely on philanthropic lines as are approved by the Council."

In light of the aforesaid provision, the issue that arises for consideration is whether the exemption is automatic. Mr.Srinath Sridevan contended that the exemption is automatic by referring to and relying upon the judgment of the Hon'ble Supreme Court in **Agastyar Trust**. In the said judgment, the Hon'ble Supreme Court compared and contrasted Sections 27 and 29 of the TN Urban Land Tax Act. In specific, the Hon'ble Supreme Court concluded

that the exemption under Section 27 requires a determination by the TN Government as to whether the payment of urban land tax would cause undue hardship. On the other hand, as regards Section 29 of the TN Urban Land Tax Act, the Hon'ble Supreme Court concluded that the exemption from urban land tax is automatic and would apply to lands owned by the authorities and institutions specified in Section 29.

16.While there can be no quarrel with the contention that Section 101 of the CCMC Act, as it stood prior its amendment, does not confer discretion on the Chennai Corporation to refuse the exemption by applying the "undue hardship" test, nevertheless, the exemption under Section 101(c) applied only to buildings, including hostel buildings, which were used for educational or charitable purposes during the relevant period. Therefore, as regards the GTL College, in order to decide whether the exemption applies, a prior determination would be necessary as to whether the buildings were used for educational purposes. In this regard, Section 101(c) is different from the provisions that were interpreted in **Satya Narain Pandey.** In **Satya Narain Pandey,** the Hon'ble Supreme Court interpreted Section 2(1) of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act,

1972. Clauses (c) to (e) of Section 2(1) of the aforesaid Act applied to buildings used or intended to be used for the purposes specified therein. By contrast, Section 101(c) applied only to buildings that were used for educational purposes and not to buildings that were intended for such use. Accordingly, it is necessary for the person claiming exemption under Section 101(c) to establish that the buildings were actually used for educational purposes. Needless to say, it would be necessary for the persons claiming exemption to provide necessary evidence to establish that the buildings were used for educational purposes. In the present case, the Appellant did not provide such evidence to the Chennai Corporation.

17. The other aspect to be considered is the implication of the concession made in paragraphs 6 and 7 of the impugned order. The impugned order of the learned Judge records that the Appellant/Petitioner therein was willing to pay the amount demanded as property tax provided interest and penalty is not levied. Mr.Srinath Sridevan is correct in pointing out that the Appellant/Petitioner had contended in the grounds that the Appellant is exempted from the payment of property tax as per Section 101(c) of the CCMC Act. Therefore, the concession is contrary to the

grounds in the writ petition. By relying upon judgments such as **Amalgamated Coalfields** and **Bharat Kala Bhandar,** Mr.Srinath Sridevan also contended that there can be no acquiescence even by paying a tax under a mistake. In the present case, the Appellant did not pay the tax and merely offered to pay it as recorded in paragraphs 6 and 7. The effect of a concession made by counsel was discussed elaborately in the judgment of this Court in **The Chairman, Tamil Nadu Uniformed Services Recruitment Board v. M. Madhan Kumar, W.A. No. 670 of 2020, Judgment dated 31.08.2020.** In the said judgment, which was authored by the Hon'ble Chief Justice, several precedents on the subject were cited and extracted.

18. For the present purposes, it is sufficient to refer to a few of them. In **Union of India and others v. Mohanlal Likumal Punjabi, (2004) 3 SCC 628,** the Supreme Court held as under:

> **"8.**We shall first deal with the effect of concession, if any, made by learned counsel appearing for the present appellants before the High Court. Closer reading of the High Court's order shows that the High Court took the view that in view of the revocation of the order on 19-12-1994 and the order passed by the High Court on 11-1-1995, no

further order could have been passed under Section 7 of the SAFEMA. After having expressed this view, the so-called concession is recorded. In our view the concession, if any, is really of no consequence, because the wrong concession made by a counsel cannot bind the parties when statutory provisions clearly provided otherwise. It was observed by a Constitution Bench of this Court in Sanjeev Coke Mfg.Co.v. *Bharat Coking Coal Ltd.*[(1983) 1 SCC 147] that courts are not to act on the basis of concession but with reference to the applicable provisions. The view has been reiterated in Uptron India Ltd. v. Shammi Bhan[(1998) 6 SCC 538 : 1998 SCC (L&S) 1601] and Central Council for Research in Ayurveda v. Dr.K. *Santhakumari* [(2001) 5 SCC 60 : 2001 SCC (L&S) 772] . In para 12 of *Central Council case* [(2001) 5 SCC 60 : 2001 SCC (L&S) 772] it was observed as follows: (SCC p. 64, para 12)

> "*12*. In the instant case, the selection was made by the Departmental Promotion Committee. The Committee must have considered all relevant facts including the inter se merit and ability of the candidates and prepared the select list on that basis. The respondent, though senior in comparison to other candidates, secured a lower place in the select list, evidently because the principle of 'merit-cum-seniority' had been applied by the Departmental Promotion Committee. The

respondent has no grievance that there were any mala fides on the part of the Departmental Promotion Committee. The only contention urged by the respondent is that the Departmental Promotion Committee did not follow the principle of 'seniority-cum-fitness'. In the High Court, the appellants herein failed to point out that the promotion is in respect of a 'selection post' and the principle to be applied is 'merit-cum-seniority'. Had the appellants pointed out the true position, the learned Single Judge would not have granted relief in favour of the respondent. If the learned counsel has made an admission or concession inadvertently or under a mistaken impression of law, it is not binding on his client and the same cannot enure to the benefit of any party."

9. In Uptron India Ltd. v. Shammi Bhan [(1998) 6 SCC 538 : 1998 SCC (L&S) 1601] it was held that a case decided on the basis of wrong concession of a counsel has no precedent value. That apart, the applicability of the statute or otherwise to a given situation or the question of statutory liability of a person/institution under any provision of law would invariably depend upon the scope and meaning of the provisions concerned and has got to be adjudged not on any concession made. Any such concessions would have no acceptability or relevance while

determining rights and liabilities incurred or acquired in view of the axiomatic principle, without exception, that there can be no estoppel against statute."

19. Likewise, in ***Himalayan Coop. Group Housing Society v. Balwan Singh*, (2015) 7 SCC 373,** the Supreme Court held as under in paragraphs 22 and 32:

> **"22.** Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and

compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

32. Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. **A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed** (emphasis added). We hasten to add neither the client nor the court is

> bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights."

20. The principles that can be gleaned from the aforesaid judgments are that unequivocal concessions by a counsel on facts are binding on the client. On the contrary, concessions on pure questions of law are not binding. Further, a lawyer has no implied authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such admission helps achieve the purpose for which the lawyer was employed. When these principles are applied to the facts of this case, it is clear that the lawyer admitted liability without authorisation after making an assertion of entitlement to an exemption in the grounds. In our view, a concession by counsel does not create an estoppel as regards a statutory exemption. Given that the

impugned order of the Writ Court does not discuss the exemption or its applicability, it cannot be concluded that a decision was made that the Appellant is not entitled to an exemption. Besides, it cannot be concluded that there was a voluntary relinquishment of the claim for exemption so as to constitute a waiver of a statutory right by the Appellant**.** As such, these contentions of the learned counsel for the Appellant, in this regard, are liable to be accepted.

21. As stated earlier, the claim for exemption under Section 101(c) is required to be established by the person concerned by providing evidence that the buildings were used for educational purposes. In the present case, it would be necessary for the Appellant to establish that the buildings were used for educational purposes during the relevant period. It would also be necessary to establish that the Appellant is entitled to an exemption in respect of the buildings that were used as hostels although hostel fees may have been collected. Such determination would have to be made by the Chennai Corporation authorities by examining relevant evidence. For such purposes, it is necessary that the matter be remanded for determination by the Chennai Corporation.

22. Accordingly, the impugned order of the learned single Judge in each of the cases and the demand notices are set aside but the matter is remanded to the Chennai Corporation. The Chennai Corporation shall conduct an enquiry as to the entitlement of the Appellant to the exemption during the relevant period by providing a reasonable opportunity to the Appellant, including to produce all necessary documents to establish entitlement to exemption during the relevant period. Based on such enquiry, the Corporation shall pass orders on merits and in accordance with law within a period of three months from the date of receipt of a copy of this judgment.

23. These writ appeals are disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

(A.P.S.,CJ,) **(S.K.R.,J,)**

01.12.2020

Index :Yes
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To

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