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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

**&
HON'BLE SHRI JUSTICE ANIL VERMA**

ON THE 16th OF JUNE, 2023

WRIT APPEAL No. 537 of 2023

BETWEEN:-

**SOUTH INDIAN CULTURAL ASSOCIATION
EDUCATIONAL TRUST (SICA) THROUGH ITS TRUSTEE
KAARTIK SHASHTRI, AGED ABOUT 59 YEARS,
ADDRESS: PLOT NO.17, 17-A, PHASE II, SCHEME NO.78,
INDORE (MADHYA PRADESH)**

.....APPELLANT

***(BY SHRI VASHISTHA NARAYAN DUBEY WITH SHRI AMIT DUBEY -
ADVOCATE)***

AND

- 1. INDORE MUNICIPAL CORPORATION INDORE
THROUGH
COMMISSIONER, INDORE MUNICIPAL
CORPORATION, INDORE (MADHYA PRADESH)**
- 2. THE COMMISSIONER,
INDORE MUNICIPAL CORPORATION INDORE.
(MADHYA PRADESH)**
- 3. DEPUTY COMMISSIONER (REVENUE) INDORE 3,
MUNICIPAL CORPORATION INDORE (MADHYA
PRADESH)**
- 4. THE ASSISTANT REVENUE OFFICER ATAL BIHARI
VAJPAYEE, ZONE NO. 07, INDORE MUNICIPAL
CORPORATION, INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANIKET NAIK AND SHRI PRADYUMNA KIBE - ADVOCATE)

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*This appeal coming on for admission this day, JUSTICE VIJAY
KUMAR SHUKLA passed the following:*

ORDER

1. The present intra-court appeal under Section 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyaya Peeth Ko Appeal) Adhiniyam, 2005 is arising out of the order dated 15.3.2023 passed by the Single Judge in W.P. No.5866 of 2023, whereby the writ petition was dismissed with liberty to the appellant/petitioner to avail the remedy of appeal under Section 184 of the Municipal Corporation Act, 1956 (hereinafter referred as "Act'). The petitioner filed writ petition challenging the demand of property tax. The property tax was imposed by order dated 27.1.2022 passed by the respondent No.3 under the Act.

2. Counsel for the appellant/petitioner submits that though in relief clause challenge was not mentioned to the order dated 27.1.2022 but in Para-1 of the writ petition mentioning particulars of the order, the order dated 27.1.2022 was also mentioned. Due to inadvertence and typographical mistake, a challenge was not mentioned in the relief clause. The learned Single Judge has declined to examine the validity of the said order on hyper technical objection. It is further asservated that the appellant/petitioner is a cultural educational trust registered under the M.P. Public Trust Act, 1951 for the object of imparting education on the basis of 'No Profit No Loss'. The plot in question was allotted by the Indore Development Authority by executing a lease of Plot N.17 and 17-A of Scheme No.178 Part-II (PSP), Indore and appellant obtained building permission on 25.4.2009 and raised multi-storey building to run educational institution. The appellant/petitioner was not paying the property tax by virtue of exemption under Section 136 of the M.P. Municipal Corporation Act, 1956. The respondents issued notice dated 25.2.2020 to the appellant/petitioner demanding the property tax and other taxes on the land and building. The appellant/petitioner filed the Writ Petition No.5889/2020, which was disposed of

by the order dated 12.3.2020 with a direction to the respondents to give an appropriate opportunity of hearing and disclose the correct position about liability of payment of tax by the petitioner. Thereafter, the respondents issued notice dated 27.1.2022 demanding the arrears of property tax of Rs.85,76,376/-. The appellant/petitioner submitted a detailed representation against the said demand. After the order passed by this Court in WP No.5889/2020, the Dy. Commissioner (Revenue), Indore Municipal Corporation rejected the representation and upheld the demand of Rs.85,76,376/- and final notice was issued.

3. Counsel for the appellant/petitioner further urged that the appellant being a lessee and a charitable trust, is entitled for exemption from payment of property tax by virtue of Section 136 of the Act of 1956 and therefore, the demand is illegal. The authority has failed to appreciate the provisions of Section 132 and 136 of the Act in a proper perspective.

4. Counsel for the respondents raised a preliminary objection before the learned Single Judge and before this Court that the petition has been filed without availing the alternative remedy available under section 184 of the Act to avoid prerequisite condition of deposit of tax before filing the appeal, which is a statutory requirement.

5. We have heard learned counsel for the parties.

6. So far as the objection in relation to not challenging the order of imposition of property tax dated 27.1.2022 in relief clause of writ petition is concerned, we do not find any substance in the said objection because in Para-1 of the writ petition the appellant/petitioner has mentioned the details of the impugned order dated 27.1.2022. Further, in a writ petition under Article 226 of the Constitution of India, the court has ample power to amend the relief clause.

A reference may be made on the judgment by the Apex Court in the case of **Ramesh Kumar Vs. Kesho Ram reported in 1992 Supp (2) SCC 623** and **Kaushal Kishore Vs. State of U.P. reported in (2023) 4 SCC 1**.

7. Upon perusal of the impugned order imposing property tax on the appellant-Institution, we find that the authority has not addressed to the various contentions raised by the appellant herein in regard to the ownership of the property and status of lessee in regard to the payment of property tax under the provisions of Section 132 and 136 of the Act of 1956 and therefore, the impugned order dated 27.1.2022 is set aside. The liberty is granted to the appellant to file a detailed and comprehensive representation/objection raising all objections before the competent authority within a period of 15 days from today along with receipt of deposit of Rs.10 Lakhs and if the said representation is submitted within the aforesaid period, the same shall be decided afresh by the competent authority in accordance with law by adverting to the contentions raised by the appellant/petitioner by passing a reasoned and speaking order affording opportunity of hearing to the appellant, within one month from the date of filing of representation/objection and till then in pursuance to the impugned notice, no recovery shall be made from the appellant/petitioner. The appellant shall not seek any adjournment in the matter.

8. If the representation/objection is not submitted within 15 days from today along with receipt of deposit of Rs.10 Lacs, the respondents shall be free to recover the amount from the appellant/petitioner in pursuance to the impugned order and notice. If the appellant/petitioner is aggrieved with the order passed by the competent authority, the appellant shall be free to avail the remedy against the said order in accordance with law.

9. It is made clear that this Court has not examined the issues raised by the parties on merit and the authority will not be influenced by any observation either made by this Court in the present appeal or by the Single Bench in WP No.5866 of 2023.

10. Writ appeal is allowed in part and disposed of.

C.C. as per rules.

(VIJAY KUMAR SHUKLA)
JUDGE

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(ANIL VERMA)
JUDGE

