

(2009) 06 KL CK 0020

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25150 of 2008

Abdul Shukkoor

APPELLANT

Vs

District Collector, Ernakulam and Others

RESPONDENT

Date of Decision : 10-06-2009

Acts Referred:

Plantations Labour Act, 1951 — Section 15, 2, 3, 5A

Citation : (2009) 06 KL CK 0020

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : K.K.M. Sheriff, A.A. Ziyad Rahman, Lal K. Joseph and Sheena Samuel, for the Appellant; Bijoy Chandran, for the Respondent

Judgement

P.R. Ramachandra Menon, J.—The Petitioner is challenging the assessment of Building Tax in respect of the building having separate units with different door Nos. as a "Single Unit", instead of assessing it separately. It is the admitted case of the Petitioner that the building was constructed by his own funds in the year 2005, consisting of "6" separate apartments in the three storied structure. Subsequently, after completion of the building, the Petitioner transferred "four" units to some other persons in the year 2006-2007. It is stated that all the six units are having separate door numbers and electric connection as borne by Ext. P-2 property tax receipts and Ext. P-3 bills issued by the Kerala State Electricity Board.

2. With regard to the sequence of events, the third Respondent passed Ext. P-5 assessment order whereby the liability of the Petitioner was fixed, taking the Building Complex as a single unit. The Petitioner challenged the assessment by filing appeal before the second Respondent, which led to Ext. P-7 order, whereby the claim of the Petitioner was rejected. The Petitioner approached this Court by filing W.P. (C) No. 10163/08, where upon it was disposed of by Ext. P-8 Judgment, directing the Petitioner to file statutory revision before the third Respondent. The Petitioner filed Ext. P-9 revision petition which was considered

by the first Respondent and it was dismissed as per Ext. P-10 order, which is under challenge in this Writ Petition.

3. The learned Counsel for the Petitioner submits that the reliance placed on explanation 2, to Section 2(e) defining the term "building" is quite wrong and misconceived. The learned Counsel submits that the definition of the term "building" as defined u/s 2(e) contemplates assessment of "part" of the building as well and hence that the buildings constructed by the Petitioner, having different units/door Nos. are liable to be assessed separately. The term "building" is defined u/s 2(e) as follows:

Section 2(e):

"Building" means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure.

Explanation 1:

In the case of buildings constructed for providing housing accommodation for workers and their families residing in plantations, in pursuance of Section 15 of the Plantations Labour Act, 1951 (Central Act 69 of 1951) or buildings constructed under the Government of India Subsidised Housing Scheme for industrial workers, each part of a building providing or intended to provide accommodation for a worker and his family shall be deemed to be a separate building.

Explanation 2:

Where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building.

4. In support of the contention of the Petitioner, reliance is placed on *Lalitha v. State of Kerala* 1994 (2) KLT 66 and also on the decision rendered by a Division Bench of this Court reported in *Chandran Vs. Travancore Devaswom Board*, .

5. The observation made in 1994 (2) KLT 66 : 1994 (2) KLT 66 providing for separate assessment has to be read and understood in the factual context. Two separate cases were considered and dealt with therein. In the first case, two separate buildings were constructed. One was a shopping complex with sixteen shop rooms and the other a Hotel. These two sets of independent buildings were taken together and assessed as a single unit. In the second case, two separate firms constructed two separate buildings with a road in between, in the land belonging to two common partners; which however was taken as a single unit for assessment. It was held that in both the cases, the buildings were having separate existence and were to be assessed separately. In the instant case, the

admitted facts clearly show that the common building having different units was constructed by the Petitioner himself and transferred subsequently to different persons. There is black and white difference in the nature of the building when compared with the nature of the buildings involved in 1997 (2) KLT 66 and hence the reliance sought to be placed thereon is quite out of context.

6. With regard to the reliance placed on the dictum in Chandran Vs. Travancore Devaswom Board, , the issue involved therein was in respect of the claim of different owners to have assessment carried out separately in respect of the different portions owned by them. It was in the course of considering the above issue, that the Court made certain remarks with reference to the "explanation 2" appearing u/s 2(e), observing that even without "explanation 2", separate assessment was possible u/s 2(e) of the Act. Reliance sought to be placed by the learned Counsel for the Petitioner on the observations made by the Court in para 15 does not appear to be correct to arrive at the conclusion that the different portions of the building with different door nos are to be assessed separately, though constructed, owned and possessed by the same person.

7. The learned Counsel for the Petitioner makes further reference to the decision of the Apex Court reported in Notified Area Committee Nangal Township Vs. Bhakra Management Board, Chandigarh and Others, ; mainly on para 2 and 9. In the said case, the issue considered by the Apex Court was whether it was legally correct in assessing the "annual value" of a row of Quarters" in one block as a "building" for the purpose of levying house tax under the Punjab Municipal Act; with Specific reference and interpretation to the term "building" as defined under Clause 2 of Section 3 of the Act. It was in the said circumstance that the Apex Court observed that fixation of the "annual value" without any regard to actual occupier/employee concerned cannot be held as sustainable. The position of law discussed therein, with reference to the specific facts, does not promote the case of the Petitioner herein, in any manner.

8. The Learned Government Pleader appearing for the Respondents, submits that the "Scheme" of the Act is to assess the building as a single unit for the purpose of assessment and that the benefit provided, under "explanation 2" is only by way of exception. Reference is also made to Section 2(k) which defines the term the "plinth area", as well as Section 5(4) for assessment of the tax in respect of the additional construction, whereby after assessing the building tax for the total area of building, the amount already levied towards the tax in respect of the already existing area is to be deducted. The learned Government Pleader also refers to the verdict passed by this Court in Shenoy Real Estates (P) Ltd. Vs. Tahsildar, ; which is having striking similarity to the facts and circumstances as involved herein, but for the fact that the property therein was owned by different persons.

9. In the decision in Shenoy Real Estates (P) Ltd. Vs. Tahsildar, the ownership of the different portions in the building was conveyed to the different owners after completion of the construction by the builder and admittedly the entire cost of

construction was met by none other than the builder. The claim of the persons to have separate assessment was negated by the Division Bench of this Court, observing that it will be contrary to the statutory prescription. In the instant case also, the ownership of the concerned "four different units" came to be vested with the different owners only after construction of the building, at the cost incurred by the Petitioner himself. As such, it squarely comes within the purview of the above Judgment.

10. The learned Counsel for the Petitioner submits that the above case has to be treated separately, because of the fact that in the case involved in *Shenoy Real Estates (P) Ltd. Vs. Tahsildar*, the claim, was made by the different persons who bought the proportionate rights and interests from the builder, where as in the instant case, the Petitioner expressed his willingness and liability to pay the entire tax in respect of the building by himself. According to the Petitioner, the different units in the building were having separate door numbers, separate access, separate electricity connections etc. The learned Counsel for the Petitioner submits that the question whether the construction has been made by the owner himself or by several persons as appearing in the case reported in *Shenoy Real Estates (P) Ltd. Vs. Tahsildar*, has no consequence at all. The learned Government Pleader rebuts the above proposition and placed a copy of the unreported judgment dated 12-12-2008 in W.P.(C) No. 28873/03. The property therein belonged to two persons who constructed a common building having ten units; of which four units were belonging to the Petitioner, while six units were belonging to the fourth Respondent and they were given separate Nos. and assessed separately by the Municipality. The claim of the Petitioner concerned was to have separate assessment in respect of the separate shop rooms, particularly in view of the fact that the property was owned by different persons, enjoying the common amenities provided. The Court held that separate assessment of building was called for only under explanation 2 to Section 2(e) of the Act, when such building was constructed by the different owners, making use of the funds jointly contributed. In the instant case also, the fact that the building is having common staircase and such other common amenities so as to be made use of by the occupants of the different portions/units does not in any way tilt the matter, so as to sustain the case of the Petitioner. The submission made by the learned Government Pleader, that the Scheme of the Act provides to assess the building as a single unit, calculating the "plinth area" as given u/s 2(k) of the Act, also in view of the procedure u/s 5(4) regarding fixation of the liability in respect of the additional construction subject to explanation 2 to Section 2(e)-which is only an exception, appears to be of considerable force. More so, in view of the position of law as discussed and declared in *Shenoy Real Estates (P) Ltd. Vs. Tahsildar*, and also by Anr. learned Judge of this Court in the judgment passed in WP(C) 28873/03. The Writ Petition is devoid of any merit and no interference is called for.

11. The learned Counsel for the Petitioner submits that, fixation of liability in respect of the "luxury tax" u/s 5A of the Act being from "year to year" and also

in view of the fact that the Petitioner has transferred "four units" in the common building to some other persons, the matter is to be reconsidered with regard to the assessment of the "luxury tax" for the relevant period.

12. Considering the above aspect, the third Respondent is directed to appraise the matter with regard to the fixation of "luxury tax" u/s 5A of the Act, in respect of the actual area of the building owned by the Petitioner, reckoning the entire building at the hands of the Petitioner till the time of transfer of four units in 2006 and reckoning the actual extent available thereafter. This shall be finalized as expeditiously as possible; at any rate within three month from the date of receipt of a copy of this Judgment.

The Writ Petition is disposed of as above.