

(2023) 11 KL CK 0213
In the High Court Of Kerala
Case No : Writ Appeal No. 2003 Of 2023

Ahamed Thazhe Chalikal

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 21-11-2023

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2023) 11 KL CK 0213

Hon'ble Judges : Dr. A.K.Jayasankaran Nambiar, J;Dr. Kauser Edappagath, J

Bench : Division Bench

Advocate : G.Santhosh Kumar, V K Shamsudheen

Final Decision : Dismissed

Judgement

Dr.Kauser Edappagath, J.

1. This writ appeal has been filed challenging the judgment of the learned Single Judge in WP(C) No.3074/2020 dated 15th September 2023.

2. The appellant is the petitioner in the writ petition. He owns a commercial building with a plinth area of 5437.39 M2 situated at Kozhikode. It was let out to M/s Kalyan Silks and is being used as its showroom. On completion of the building, it was assessed to building tax by the 1st respondent at ` 11,94,163/-. The appellant unsuccessfully challenged the said assessment before the Appellate Authority. Hence, he paid the entire building tax amount. Thereafter, another order of assessment (Ext.P2) was served on the appellant, directing him to pay an additional amount of building tax of ₹ 25,29,000/- on the ground that he had made a structure over the terrace of the building, and it is amenable to tax under the Kerala Building Tax Act. The appellant challenged the Ext.P2 assessment order before this court in W.P(c) No.12153/2018. This court, vide Ext.P5 judgment, allowed the writ petition and quashed the Ext.P2. The 1st respondent was directed to pass a fresh order after affording an opportunity for hearing to the appellant. Thereafter, the 1st respondent passed a fresh order

marked as Ext.P8. The appellant challenged the Ext.P8 assessment order before the learned Single Judge, who dismissed it as per the impugned judgment. Hence, the appellant is before us.

3. We have heard Sri.Santhosh Kumar G., the learned counsel for the appellant and Sri.V.K.Shamsudheen, the learned Senior Government Pleader.

4. The learned counsel for the appellant submitted that Ext.P8 order passed by the 1st respondent is against the spirit of Ext.P5 judgment of this court and hence not sustainable. Per contra, the learned Government Pleader submitted that there is absolutely no illegality or impropriety in Ext.P8 order and if at all the appellant is aggrieved by the same, the remedy open to him is to prefer statutory appeal.

5. Initially, the Ext.P2 assessment order was passed by the 1st respondent without giving the appellant an opportunity to hear. The said order of assessment was unsupported by reasons also. It was in that circumstances that this court vide Ext.P5 set aside the said order. However, it seems that Ext.P8 order also suffers from the same infirmity. Absolutely no reason has been stated in Ext.P8 as well. The appellant has a specific case that he had only erected truss work over the terrace of the building for protecting the building from heat and rain and the said area cannot be termed as part of the building or appurtenant to the building to subject it to the building tax. The said specific case set up by the appellant at the inception was not taken into consideration at all by the 1st respondent.

6. The question whether the additional construction made by the appellant on the terrace of the building would form part of the original building or not is a disputed question of fact.

The said disputed question of fact cannot be resolved under the exercise of jurisdiction vested with this court under Article 226 of the Constitution of India. The appellant has statutory appellate remedy against Ext.P8 order. The remedy open to the appellant is to approach the Appellate Authority challenging Ext.P8 order. Hence, we find no reason to interfere with the impugned judgment. However, we make it clear that in the event the appellant files an appeal before the Appellate Authority against Ext.P8 order, within two weeks from the date of receipt of a copy of this judgment, the same shall be considered by the Appellate Authority on merits in accordance with law and dispose of the same within three months thereafter. The Appellate Authority shall give an opportunity for the appellant for hearing and conduct a site inspection, if necessary. The Appellate Authority shall consider the contentions raised by the appellant against the assessment and detailed in the above paragraphs. The 1st respondent shall not enforce Ext.P8 order till the disposal of the appeal by the Appellate Authority.

The writ appeal accordingly stands dismissed with the above observation.