
(2016) 01 KL CK 0017
In the High Court Of Kerala
Case No : W.P. (C) No. 20416 of 2013

Ananthapadmanabhan Nair A.B. and Others	APPELLANT
Vs	
District Collector, Ekm and Others	RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Kerala Building Tax Act, 1975 — Section 2(e)

Citation : (2016) 1 KerLJ 495 : (2016) 1 KHC 388 : (2016) 1 KLT 485

Hon'ble Judges : A.K. Jayasankaran Nambiar, J.

Bench : Single Bench

Advocate : Isac T. Paul and V.M. Kurian, for the Appellant; Liju V. Stephen, Government Pleader, for the Respondent

Final Decision : Disposed off

Judgement

A.K. Jayasankaran Nambiar, J.—1. The petitioners, who are husband and wife, purchased 13.510 cents of land in S. No. 390/5A/2 in Marady Village, Muvattupuzha Taluk by separate sale deeds. On the said piece of land, they constructed a building with a ground floor and a first floor. It is their case that the ground floor belongs to the 1st petitioner husband, and the first floor belongs to the 2nd petitioner wife. By Ext. P5 order dated 25/07/2012, the 3rd respondent assessing authority under the Kerala Building Tax Act, assessed both the floors as a single unit for the purposes of levy of building tax. The petitioners therefore preferred an appeal before the Appellate Authority. The said appeal was dismissed by Ext. P7 order dated 14/01/2013, where the Appellate Authority relied on the fact that an internal staircase that existed in building was the sole means by which access could be obtained to the first floor of the building, as also the ground floor of the building and hence, he was of the view that the building was essentially a single unit which would be subjected to levy of building tax as such. Aggrieved by Ext. P7 order of the 2nd respondent, the petitioner preferred a revision application before the 1st respondent. The 1st respondent by Ext. P9 order dismissed the revision petition on substantially the same ground as the 1st

Appellate Authority. In the writ petition, the case of the petitioner is essentially that, the mere existence of a staircase that connected the two floors of the building, could not have been a ground to treat the separate portions of the building as one for the purposes of levy of building tax. The petitioner points to the separate sale deeds by which the land in question was purchased, the separate building permits that were issued in the name of the husband and wife, the separate electricity and water connection and also the separate contribution that was made by the petitioners at the time of construction of the building, to contend that the building should have been assessed separately in the names of the husband and wife. A counter-affidavit has been filed on behalf of the 3rd respondent wherein Ext. P9 order of the 1st respondent is sought to be justified on the reasons stated therein. It is the case of the 3rd respondent that the agreement entered into between the husband and wife were essentially for avoiding/minimizing their liability to tax and hence could not be relied upon. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

2. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that this is a case where the scheme of the Building Tax Act and, in particular, the provisions of Explanation 2 to Section 2(e) of the said Act have not been appreciated by the authorities, who were called upon to decide on the manner of assessment of the building to building tax and luxury tax. A perusal of the provisions of Explanation 2 to Section 2(e) would indicate that as per the Scheme of the Act, the levy of tax is on a building that is constructed after the cut-off date specified in the Act. While under normal circumstances, the building as a whole would have to be treated as a single unit for the purposes of tax, an exception is carved out in cases covered by Explanation 2 to Section 2(e) of the Act. As per the said explanation, where the 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 apartments or flats shall be deemed to be a separate building. It is apparent from a reading of the Explanation, therefore, that for the building to be assessed as separate units, it must be shown that:

"1. The building consists of different apartments or flats.

2. The said apartments or flats are owned by different persons.

3. That the cost of construction of the building was met by all such persons jointly."

3. It was incumbent upon the respondent therefore to consider whether the ownership in the apartments that were constructed vested in different persons and the said persons had contributed to the cost of construction of the building. In order to arrive at a finding on these aspects, the respondent had to consider documents that would suggest an ownership of the various persons in the different portions of the building that are stated to have been assigned in

their favour. The proportionate share of the undivided interest in the land would be an indicator of the rights possessed by them in the building. That apart, the separate door numbers, separate payments of property tax, separate occupancy certificates issued to them etc., would all suggest an ownership in the respective portions of the building that are occupied by them. Ultimately, there will be no single document in such cases which would clearly point to a title, over the respective portions of the building, in each of the individual owners. The existence of a title, over the portion stated to be owned by each of the persons, is something that would have to be inferred from the documents available. Similarly as regards the aspect of cost of construction, it is again something that would have to be inferred from documents such as construction agreements, documents showing possession of funds, details of bank statements, receipts from builder etc., which would indicate that the person, claiming to be the owner of the building, had also contributed to the cost of construction of that portion of the building over which he claims ownership. The findings entered into by the assessing authority, as well as the Appellate Authority, cannot be a mechanical one but must be one that keeps in mind the scheme of the Building Tax Act as noted above, and also takes note of the decisions of this Court in *Nelson Rozario v. State of Kerala* , 2013 KHC 2502 : 2013 (1) KLT 573 : 2013 (2) KLJ 331, *Varghese v. State of Kerala* , 2013 (2) KHC 489 : 2013 (2) KLT 831 : ILR 2013 (2) Ker. 1025, *Natarajan v. State of Kerala* , 2013 (4) KHC 306 : 2013 (4) KLT 364, *Pavan Kumar v. State of Kerala* , 2012 (2) KHC 695 : , 2012 (2) KLT 889 : , ILR 2012 (3) Ker. 79: , 2012 (2) KLJ 796 and *Tahsildar and Another v. Soman Peter* , 2014 (4) KHC 154 : ILR 2014 (4) Ker. 327 : 2014 (4) KLJ 17 : 2014 (4) KLT SN 71. It would also be incumbent upon the authorities to consider the recent decision of the Supreme Court in *State of Kerala and Others v. A.P. Mammikutty* , 2015(3) KHC 794 : 2015 (3) KLT 138 : ILR 2015 (4) Ker. 77 : AIR 2015 SC 3009 : (2015) 10 SCC 632 especially paragraph 14 thereof, which deals with the manner in which the requirement of meeting the cost of construction of the building for the purposes of Explanation 2 to Section 2(e) of the Kerala Building Tax Act has to be interpreted. Insofar as I do not find such an exercise as having been done in any of the orders impugned in this writ petition, I quash Exts. P5, P7 and P9 orders and direct the 1st respondent to consider the matter afresh in the light of the documents produced by the petitioner after affording the petitioner an opportunity of being heard in the matter. The 1st respondent shall pass fresh orders within a period of three months from the date of receipt of a copy of this judgment and in the order to be passed, he shall specifically advert to the documents produced by the petitioner, and state his reasons for accepting the said documents or rejecting the same, and then pass a reasoned order in the matter.

The writ petition is disposed as above.