

**(1989) 09 KL CK 0015**  
**In the High Court Of Kerala**  
**Case No : O.P.No. 9437 of 1987**

Aradhana Lodge

APPELLANT

Vs

The Tahsildar and Another

RESPONDENT

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**Date of Decision :** 01-09-1989

**Acts Referred:**

Kerala Building Tax Act, 1975 — Section 15

**Citation :** (1990) 1 KLJ 74

**Hon'ble Judges :** K. Sukumaran, J

**Bench :** Single Bench

**Advocate :** M.R. Parameswaran and N.N. Girija, for the Appellant;

**Final Decision :** Allowed

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## Judgement

K. Sukumaran, J.—In the busy religious township of Guruvayoor, there has been hectic construction activity, to cater to the needs of the increasing size of Worshippers. "Aradhana Lodge" is one such new building (Aradhana, literally means worship). Its construction commenced in 1974. The construction was complete by 1976. Tax was imposed on the building activity initially under the Kerala Buildings Tax Ordinance 1974. The Ordinance was replaced by an Act of that name in 1975. The constitutionality of the enactment was challenged by large number of builder in the State. By a majority judgment a Full Bench of this Court upheld the Constitutionality (Vide Radha Bat v. State of Kerala, 1978 KLT 931. The appeal before the apex court was unsuccessful (See D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another, .) Success in the litigation did not dissuade the State from reducing the tax rate: the quality of mercy is doubly blest. The enactment as amended in 1980 continues to govern the building activities, which have been visibly on the increase, in this State in recent times.

2. The petitioner was initially assessed by order dated 21-1-1984 fixing the capital value at Rs. 8,58,000/- as against the returned figure of Rs. 4,50,000/-. The petitioner filed an appeal. The Appellate Order, Ext. P3 set aside the assessment, and remanded the matter for a de novo computation of the capital

value.

3. On 8-10-1984, the fresh determination was made, based on various materials including a certificate issued by an Executive Engineer, a valuer approved by the income tax Department. The capital value was fixed at Rs. 7,37,646/-. The assessee was apparently satisfied with that determination. He paid the tax in full.

4. Two years later, Ext. P5 notice was issued seeking to rectify a mistake in the assessment. The notice indicated that the capital value would be Rs. 8,00,000/-, as against the lesser figure determined under Ext. P4. Ext. P6 was the reply, a detailed one. The antecedent events and contentions had been highlighted there. The official reaction, however, was a negative one. As against the value of Rs. 8 lakhs indicated in Ext. P5 notice, a capital Value of Rs. 8,58,000/- was proposed in the fresh notice Ext. P7. The petitioner objected on 13-3-1987. What was elaborately stated in Malayalam in Ext. P6 was succinctly summarised in English in Ext. P8. The usual order of assessment with its sphinx-like face, Ext. P9, was issued thereupon. The demand followed.

5. The petitioner has approached this Court. The assessment is assailed as lacking in jurisdiction and devoid of justification.

6. The counter-affidavit filed on behalf of the respondents, has attempted to indicate the basis of the action. The basis is a report of the Revenue Inspector dated 25-8-1987. This report is therefore a material which had come three years Subsequent to the initial assessment made on 21-1-1984. The report of the Revenue Inspector has not been produced along with the counter-affidavit. The details thereof are also not produced. All that is stated is that the report fixes the capital value of the building at Rs. 14,64,000/-.

7. The complaint about the absence of jurisdiction can be considered first.

8. The initial assessment on 21-1-1984, the appeal filed and remand made cannot be lightly ignored in considering the question whether there is a mistake apparent from the records justifying a rectification exercise. The materials actually available for the officer subsequent to the order of remand are also relevant. One such important material is the valuation certificate of a competent official, a valuer approved by the income tax Department. There was, according to the assessing authority, no infirmity in that certificate. That was why it was accepted and an assessment was made in 1984. Assuming that there is a mistake in that assessment and another view is possible, that will not make the assessment vitiated mistake apparent from the records, On the records available, there was absolutely no ground warranting a different view than one come to by the assessing authority in 1984.

9. The scope of Section 15 dealing with rectification is not unduly wide. " It is unnecessary to detail the history of the concept of an error apparent on the face of the records or mistake apparent from the records, as occurring in cognate enactments. Similar expressions have been employed in earlier enactments such

as the income tax Act. Those concepts and expressions have received judicial interpretation for a very long time now. The decision in *Asok Textiles Ltd., v. I. T Officer, Alwaye*, 1956 K. L. T. 207, is one rendered by the Travancore Cochin High Court, just on the eve of the formation of the State. The decision of the Kerala High Court in *Abdul Rahim Haji Jacob Sait v. The Commissioner of income tax*, 1972 K. L. J. 121, reiterates the principles which had been firmly laid down by the law as laid down by the Supreme Court. The limited character of the power of the Taxing Officer when functioning under that section cannot, therefore, be doubted.

10. On the basis of the principle's gatherable from the case law on the subject, there cannot be any doubt that in the present context, there was no justification for the view that there was a mistake apparent from the records. The materials did not disclose any error at all. The report of the Revenue Inspector submitted in the year 1987, (and one which had not been furnished to the petitioner) would not constitute a material on the basis of which a mistake apparent from the records could be posited.

11. The conduct of the officials in further raising the figure of capital value, when objection was filed to the first proposal of rectification is indicative of a vindictive attitude against the assessee who had been fighting his best to have a proper and just decision in relation to his real liability. The order of assessment Ext. P9 and the demand Ext. P9 Annexure, have neither jurisdiction nor justification in the light of the foregoing discussion. Squash them accordingly. The original petition is allowed. The petitioner pressed for costs and would have been ordinarily entitled to it. I decline to award costs; the disapproval of the official caprice is strong enough censure.