

(2014) 10 KL CK 0248

In the High Court Of Kerala

Case No : O.P. Nos. 11530 of 2003 (V) and 11927 of 2003

Ashoka Hospital

APPELLANT

Vs

K.P. Divakaran

RESPONDENT

Date of Decision : 20-10-2014

Acts Referred:

Kerala Municipalities Act, 1994 — Section 242, 509(11), 509(2)

Citation : (2014) 10 KL CK 0248

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

Bench : Single Bench

Advocate : M.C. Sen, Sr. Advocate and M. Santoshkumar, Advocate for the Appellant; K. Divakaran Nair, K.K. Chandran Pillai and Sudheesh A, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—Since the issue involved in both these original petitions is the same they are taken up for consideration together and disposed by this common judgment.

2. The petitioner in O.P. No. 11530 of 2003 is a hospital, which is being conducted in a building, the owners of which are the petitioners in O.P. No. 11927 of 2003. The petitioner in O.P. No. 11530 of 2003 was notified of the property tax assessment for the building in question for the period from 01.04.1990 to 31.03.2003. On receiving a notice demanding property tax from the respondent Municipality, the petitioner intimated the same to the 1st and 2nd respondents, who are the petitioners in the connected original petition. The petitioner was then informed that, against a similar demand received by them, the 1st and 2nd respondents had also preferred an appeal before the appellate authority in terms of Section 509(2) of the Kerala Municipalities Act, 1994. The petitioner was also informed that the Kannur Municipal Council had stayed the recovery of the amounts due by way of property tax on the building in the said appeal proceedings initiated by the 1st and 2nd respondents. Consequent to the said information, the petitioner approached the respondent Municipality, but the

Municipality insisted on the petitioner paying the tax that was demanded from him. This led the petitioner to prefer Ext. P9 appeal against the demand served on him. Both, the petitioner in O.P. 11530 of 2003 and the 1st and 2nd respondents, who are the petitioners in O.P. No. 11927 of 2003, have a common case that they were not heard in the appeals preferred by them before the respondent Municipality and that they came to know of the rejection of the appeals only through a news item that appeared in the newspapers subsequently. When served with demand notices consequent to the disposal of the appeal, the original petitions were filed challenging the demands made in the said demand notices. It is apparent from a perusal of the averments in the original petitions that there is an inter se dispute, between the petitioners and the 1st and 2nd respondents, as to who is actually liable to pay the property tax to the respondent Municipality. The issue as to what is the exact amount that has to be paid to the respondent Municipality, by way of property tax, however, is something that has to be adjudicated by the appellate authority under the Kerala Municipalities Act, 1994, in the appeals preferred by the petitioners in both the original petitions.

3. Counter affidavits have been filed by the respondent Municipality in both the Original petitions. The respondent Municipality would vehemently maintain that the inter se dispute, between the petitioners in both the original petitions, cannot be a ground to insulate them from a liability to tax under the Kerala Municipalities Act, 1994. It is the specific stand of the Municipality that, whatever may be the nature of the dispute between the parties, the property tax dues in respect of the building will be a first charge on the building and, consequently, can be demanded from both, the owner of the building as also the tenant of the building, jointly, in terms of the Kerala Municipalities Act, 1994. It is also pointed out that, in terms of Section 242 of the Kerala Municipalities Act, 1994, even if it is found that the construction of the building is not in accordance with the provisions of the Act and Rules, the mere fact that the construction is illegal, cannot be a reason to resist the demand of property tax in respect of the said building. It is pointed out that the respondent Municipality can separately proceed against the parties for violation of the Rules in respect of the construction.

4. I have heard Sri M.C. Sen, the learned Senior counsel appearing on behalf of the petitioner in O.P. No. 11530 of 2003, Sri S.V. Balakrishna Iyer, the learned Senior counsel appearing on behalf of the petitioner in O.P. No. 11927/2003 and Sri K.K. Chandran Pillai, the learned Senior counsel appearing on behalf of the respondent Municipality in both the Original petitions.

5. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I note that this is a case where both, the landlord and the tenant of the building in question, have preferred appeals against demands received by them for property tax dues for the period from 01.04.1990 to 31.03.2003. The demand is an amount of Rs. 6,82,487/- and the

petitioners in both the Original Petitions are understood to have paid some amounts to the respondent Municipality towards the demand made against them. The issue to be considered, however, is whether the appeals preferred by the petitioners in both the Original petitions have, in fact, been heard by the appellate authority under Section 509(2) of the Kerala Municipalities Act, 1994. No doubt, the learned Senior counsel for the respondent Municipality would refer to Section 509(11) to point out that no appeal or revision could be entertained unless the tax shown in the demand notice has been paid. In this case, the facts would reveal that the appellate authority has, in fact, already considered and rejected the appeals and the petitioners came to know of this fact only through a news item that appeared in a newspaper. I am of the view that an appellate authority, under the Municipalities Act, cannot pass orders in an appeal, without hearing the parties in appeal. As there is nothing on record to suggest that the petitioners in both the original petitions were actually heard prior to a final disposal of the appeal, it is necessary to relegate the matter back to the appellate authority for a fresh decision in the matter. In view of the nature of the pleadings in the original petitions, and the fact that the order, stated to have been passed by the appellate authority, has been produced, I hold that the orders, if any passed by the appellate authority, shall stand quashed and the appellate authority shall consider both the appeals, namely, the appeal preferred by the petitioner in O.P. No. 11530 of 2003 as well as the appeal preferred by the petitioners in O.P. No. 11927 of 2003, against the demand of property tax in respect of the building in question, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioners in the matter. It will be open to the petitioners to produce all the material, that they seek to rely upon for substantiating their contentions in the appeal, before the appellate authority at the time of hearing. To enable the appellate authority to dispose the matter within the time stipulated above, I direct the petitioners to appear before the appellate authority on 06.11.2014 at 11 a.m. The respondent Municipality is not required to serve any further notice to the petitioners in connection with the hearing. The petitioners shall positively appear before the appellate authority on 06.11.2014 at 11 a.m. and the appellate authority shall, thereafter, pass orders as directed above and communicate the same to the petitioners, before proceeding to recover the tax dues, if any, after giving credit to the amounts already stated to have been paid by the petitioners in both the Original Petitions.

With these directions, both the original petitions are disposed.