
(2014) 11 KL CK 0002
In the High Court Of Kerala
Case No : W.P.C. No. 24524 of 2009-I

A.V. Mathew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 2(e), 2(e), 5A

Citation : (2014) 11 KL CK 0002

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

Bench : Single Bench

Advocate : Bechu Kurian Thomas, Indu Susan Jacob and Nisha John, Advocate for the Appellant; Lilly K.T., Govt. Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner and his wife are co-owners of 9.200 cents of land in Sy. No. 49/1 and 481/2 of Elamkulam Village. In 1997, the petitioners wife had entered into an agreement with the Kerala State Housing Board to construct a single storied building on the property. Pursuant to a loan obtained by her from the Housing Board, she proceeded to construct the ground floor of the building. Ext. P2 is the building permit that was received by the petitioner's wife for constructing the said ground floor. Ext. P2 (a) is the occupancy certificate that was issued to her subsequent to the construction. Ext. P2 (b) is the property tax receipt evidencing the fact that she had remitted the property tax in respect of the ground floor. The plinth area of the ground floor is 153 Sq.metres. It is the case of the petitioner that in 2005, he had obtained consent from his wife to construct the first floor on the same building. On obtaining the said consent, he approached the Municipal Authorities for a building permit to effect the construction, and Ext. P4 is the building permit that was issued to him. After constructing the first floor, which covered a plinth area of 170.60 Sq. mtrs. the petitioner obtained the occupancy certificate in respect of the first floor which is produced as Ext. P4 (a). Ext. P4 (b) is the property tax receipt evidencing payment of property tax by the petitioner in respect of the first floor of the building. It is also the case of the petitioner that the ground floor

and the first floor have separate building numbers, separate electricity and water connections and they have been treated as separate building for all other purposes under the Kerala Municipalities Act. It is also submitted that the first floor of the building has since been let out to a tenant. By Ext. P7 order dated 15-12-2007, the building comprising of the ground floor and the first floor was assessed to building tax by the 3rd respondent. Ext. P7 (a) is the demand notice issued pursuant thereto. While completing the assessment to building tax, the 3rd respondent computed the total plinth area of the building as 367.70 Sq. mtr. which is the total plinth area covered by the ground floor and the first floor. Thereafter, on noticing that the plinth area exceeded the extent of 278.7 Sq.mtrs, the 3rd respondent proceeded to levy luxury tax in terms of Sec. 5A of the Kerala Building Tax Act (hereinafter referred to as "the Act"). Ext. P8 is the order levying luxury tax. Aggrieved by Exts. P7 and P8 orders, the petitioner filed an appeal before the 3rd respondent Revenue Divisional Officer. By Ext. P9 order dated 30-09-2008, the appeals were rejected by the 3rd respondent on the ground that the law did not recognise separate ownership of a building between the husband and wife. It was also found that the petitioner had not produced any evidence to substantiate his contention with regard to a separate assessment of the building in terms of Explanation 2 to Sec. 2(e) of the Act. Aggrieved by Ext. P9 order of the 3rd respondent, the petitioner filed a Revision Petition before the District Collector/the 2nd respondent. By Ext. P12 order dated 18-05-2009, however, the Revision Petition was also dismissed stating the same reason that was given by the 3rd respondent in the appellate order. In the Writ Petition, Exts. P7, P7(a), P8 and P12 are impugned.

2. A counter affidavit has been filed on behalf of the 4th respondent wherein the sequence of events leading to the passing of the impugned orders, is narrated. It is, in particular, pointed out that the petitioner had failed to prove that he and his wife had absolute title over the portion of the building independently claimed by them and that they have independent rights over the said portion to the exclusion of the other. It is also pointed out that the petitioner and his wife have no saleable rights over such portions claimed by them, as the building and land is in co-ownership of the petitioner and his wife. It is, therefore, contended that it was only on account of the lack of any document to substantiate their case that the 2nd and 3rd respondents were constrained to pass orders assessing the building as a single unit for the purpose of tax.

3. I heard Sri. Paul Jacob the learned counsel appearing for the petitioner and Smt. Lilly, learned Government Pleader appearing on behalf respondents.

4. On a consideration of the facts and circumstances of the case and the submissions across the Bar, I find that Exts. P7, P9 and P12 orders suffer from a patent non-application of mind and that, the authorities while passing the said orders did not advert to the aspects that were relevant for a consideration of the issue. 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 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."

5. On the facts of the case at hand, it has to be seen whether the ground floor and first floor of the building could be seen as separate apartments or flats owned by separate persons. In my view, it is incumbent upon the 2nd respondent/revisonal authority to go into these matters and understand the Scheme of the Kerala Building Tax Act, 1975 as noted above, while taking a decision with regard to the manner in which the assessment of the building has to be done. In that process, he would have to consider the documents produced by the petitioners to establish their ownership over the land and the building, and also such documents as would indicate that the buildings are under separate ownership, and other documents which would show that the cost of construction of the building was also met by them jointly. The 2nd respondent must also necessarily take note of the decisions of this Court in *Nelson Rozario Vs. State of Kerala*, , *Varghese Vs. State of Kerala*, , *Natarajan G. and Others Vs. State of Kerala and Others*, , *Pavan Kumar P. Vs. State of Kerala and Others*, and *The Tahsildar Vs. Soman Peter*, .

6. In order to enable the 2nd respondent to take a fresh decision in the matter, I quash Exts. P7, P7 (a), P8, P9 and P12 and direct the 2nd respondent to consider the matter afresh after affording the petitioner an opportunity of being heard and pass orders in the matter within three months from the date of receipt of a copy of this judgment. The 2nd respondent shall, while passing orders in the matter, adhere specifically to the documents produced by the petitioners in support of their contentions and also give reasons for the decision taken in the matter. Considering the nature of the claim put forward by the petitioner it would be desirable that the 2nd respondent considers the documents produced by the petitioner and his wife in support of the contention that the ground floor and the first floor of the building are under separate ownership of the petitioner and his wife.

This Writ Petition is disposed of as above.