
(1990) 03 KL CK 0029
In the High Court Of Kerala
Case No : O.P. No. 47 of 1989-E

B. Parameswaran Bharathan

APPELLANT

Vs

The Tahsildar, Quilon

RESPONDENT

Date of Decision : 29-03-1990

Acts Referred:

Kerala Building Tax Act, 1975 — Section 2, 5, 5(2), 6(1), 6(2)

Citation : AIR 1991 Ker 13 : (1990) 3 ILR (Ker) 966

Hon'ble Judges : K.A. Nayar, J

Bench : Single Bench

Advocate : T. Karunakaran Nambiar, for the Appellant; K.G. Anil Babu, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Nayar, J.—This petition is to quash Ext. P2 proceedings of the Tahsildar, respondent, rectifying the original order imposing building tax on the petitioner. The petitioner constructed a multistoried building bearing numbers M.C. XVI/330 to 345 in East Village in Quilon Municipality. After the construction of the building, sometime in April 1982, he filed a return on 7-4-1986 as required under the Kerala Building Tax Act. The valuation of the building was also ascertained in the form of a building tax valuation report by the Firka Revenue inspector. Thereafter petitioner was assessed by Ext. P1 dated 31-3-1987 to pay an amount of Rs. 1,85,983.20 which he paid. A return was filed pursuant to the notice issued u/s 7(3) of the Act dated 30-12-1985. In the return in form No. II filed on 7-4-1986 the date of occupation was shown as 5th Sept. 1982 and the monthly rent of the building was shown as Rs. 24,360/-. Thereafter, an enquiry was conducted and the Revenue Inspector, submitted R1(a) report dated 29-9-1986 showing the actual rent of the building per month as Rs. 26,740/-. Since the petitioner was assessed by Ext. P1 dated 31-3-1987 without taking into account the annual rental value of the building as disclosed in the return or in the report R1(a), a notice was issued to the petitioner for revising the assessment which is

sought to be justified only as a rectification u/s 15 of the Act. The department found that the original fixation of the capital value on the basis of the construction cost was erroneous as against the capital value that can be fixed on the basis of the rent received as stated in the return as well as in Ext. R1(a). In Ext. R1(a) in column 10 relating to the rent received by the petitioner it is stated that monthly rent is Rs. 26,740/- and in the return the monthly rent shown is Rs. 24,360/-. Therefore the capital value has to be calculated u/s 2(a)(c) of the Act which according to the respondent is Rupees 32,08,800/-. In view of this, Ext. P2 proceedings dated 12-9-1988 was issued by the respondent. There was a short levy of tax amounting to Rs. 1,08,646.80 as detailed in Ext. P2. Objection to that has been filed by the petitioner as Ext. P3. Steps were taken to revise the assessment already made and notice was issued on that basis. Thereafter petitioner was given an opportunity of being heard on 16th November 1988. It is stated in the counter affidavit that Advocate Sri P. Gopalakrishnan, Quilon had appeared on behalf of the petitioner and he was heard also by the assessing authority. After considering the objections of the petitioner and the contentions raised on his behalf the assessing authority came to the conclusion that there was a mistake apparent on the face of the record liable to be rectified under S. 15 of the Act. Steps were taken to rectify the assessment by Ext. P2. (The notice proposes to revise the assessment but what is meant is only a rectification). After hearing parties the authority came to the conclusion that it is only a rectification and Ext. P2 proposal was thereafter confirmed by Ext. P4 dated 9-12-1988 and the balance amount was directed to be paid. Exts. P2 and P4 are sought to be quashed in these proceedings.

2. The contention raised on behalf of the petitioner is that building tax is charged u/s 5 at the rates specified in the schedule in respect of every building constructed and the schedule requires to charge on the capital value of the building. The capital value u/s 2(f) has to be arrived at multiplying the annual value of the building by 10 and in fixing the annual value the actual rent received will not be a basis. According to the petitioner the annual value fixed by the local Authority alone should be the basis as mentioned in Section 6(i). I do not agree with this contention. Charging of building tax is based on capital value of the building u/s 6(2). The assessing authority is given power, if it is of the opinion that the annual value fixed for a building in the assessment books of the local authority is too low, to fix the annual value of the building after giving an opportunity to the petitioner to be heard. The annual value of the building u/s 2(a) is the gross annual rent at which the building may at the time of completion be expected to let from month to month or from year to year. Therefore if the actual rent is available from the return filed or from the report gathered that can certainly be a basis u/s 2(a). The words "expected to let from month to month" will become relevant if in fact the amount of rent is not available. If the monthly rent is available. annual value can be fixed on the basis of the rent actually available. The petitioner referred to the decision reported in D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another, . The Corporation of Calcutta

Vs. Sm. Padma Debi and Others, , Delhi Municipality v. M. N. Soi AIR 1977 SC 302 and P. Sundari Bai, Vs. State of Kerala and Another, for the proposition that for fixing building tax under the Kerala Building Tax Act the actual rent received will not be a criteria. Those decisions are to the effect that if standard rent is fixed against the provision contained in the Rent Control Act, it would be illegal. The rent cannot go more than the rent fixed under the Rent Control Act. This, in view of the specific provisions in Section 6(2) of the Act which authorises the assessing authority to ignore the fair rent fixed by the local bodies, is clearly distinguishable. Another submission made on behalf of the counsel is that no rectification can be made on the basis of auditor's report. He also referred to the decision in Indian and Eastern Newspaper Society, New Delhi Vs. Commissioner of Income Tax, New Delhi, . In this case even the report has been referred to the rectification made on the basis of the return as well as the actual monthly rent evidenced by Ext. R1(a). Details regarding monthly rent received from the building were on record by way of return as well as report before the assessment itself was made. Assessment is made without advertent to these records. Petitioner's further contention is that the rectification is not permissible when on the point detailed argument is required. He referred to the decision in T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay, and Aradhana Lodge v. Tahsildar (1990) 1 Ker LT 33. In this case a notice was issued and arguments were heard and it was found that assessment is made without advertent to the details furnished by the assessee himself as well as in the reports of the Firka Revenue Inspector. Hence a rectification is effected correcting the mistake in the annual rental value fixed in the original assessment. There was error apparent on the face of the record. If the records namely the return submitted by the petitioner and the report Ext. R1(a) submitted by the Inspector on 29-9-1986 are looked into which were admittedly available in the file before the assessment were revised it would be seen the assessing officer made a patent mistake and therefore he rectified the mistake after notice to the assessee.

In the circumstances I do not find any merit in the original petition. The original Petition is dismissed.