
(2004) 11 KL CK 0007

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15526 of 2004

Chandramohan

APPELLANT

Vs

Revenue Divisional Officer

RESPONDENT

Date of Decision : 16-11-2004

Acts Referred:

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

Citation : (2005) 1 ILR (Ker) 108 : (2005) 1 KLT 593

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : C.P. Mohammed Nias, for the Appellant; Sojan James, Government Pleader, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The short question that arises for decision in this case is whether the car parking area provided in the ground floor of the petitioner's residential building is to be treated as part of "plinth area" of the building for the purpose of assessment of building tax and luxury tax under the Kerala Building Tax Act, 1975. The petitioner has produced Ext.P4 series of photographs which show that the disputed area is the car parking area in the ground floor of the residential building constructed on columns. In order to appreciate the contentions, the relevant provisions of the statute have to be referred to, which are as follows:

2(k). "plinth area" means the area included in the floor of a building and where a building has more than one floor the aggregate area included in all the floors together.

2(l) "residential building" means a building or any other structure or part thereof built exclusively for residential purpose including out-houses or garages appurtenant to the building for the more beneficial enjoyment of the main building but does not include hotels, boarding places, lodges and the like.

5. Charge of building tax:

(5) where there are out-houses, garages or other structures appurtenant to the building for the more convenient enjoyment of the building, the plinth area of such structure shall be added on to the plinth area of the main building and the building tax assessed accordingly:

Provided that the plinth area of the garage or any other erection or structure appurtenant to a residential building used for the purpose of storage of firewood or for any non-residential purpose shall not be added on to the plinth area of that building.

6. Determination of plinth area:

The plinth area of a building for the purposes of this Act, shall be the plinth area of the building as specified in the plan approved by the local authority or such other authorities as may be specified by Government in this behalf and verified by the Assessing Authority in such manner as may be prescribed:

Provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for storage of firewood or for any non-residential purpose shall not be taken into account for determining the plinth area of that building.

2. There is no dispute that Sections 5 and 5A of the Building Tax Act provide for assessment of "building tax" and "luxury tax" respectively based on "plinth area" of the building. Therefore the only question is whether part of the ground floor of the building reserved by the petitioner for parking car is "plinth area" of the building in terms of the above provisions of the Act. Counsel for the petitioner relying on the proviso to Section 6 of the Act contended that the space for car parking not being used for residential purpose has to be excluded while determining the "plinth area" of the building for assessment of building tax and luxury tax. The Government Pleader on the other hand contended that car parking space being part of ground floor of the building is "plinth area" within the meaning of that term contained in Section 2(k) of the Act. He further contended that by virtue of the inclusive definition of "residential building" u/s 2(1) and charging Section 5(5) of the Act, plinth area of even out-houses and appurtenant structures including garage used for more beneficial enjoyment of the main building have to be added on to the plinth area of the main residential building. According to him the exclusion under proviso to Section 6 relied on by the petitioner does not cover any part of the main structure of the building and it only refers to separate structures appurtenant to main building including a garage that too if used for storage of firewood or any other non-residential purpose. In other words, the respondents' contention is that the ground floor of petitioner's building being part of the main structure of the residential building and answering the description of "plinth area" is not covered by the provisos to Sections 5 and 6 of the Act which apply only to appurtenant structures and not to any part of the main building.

3. In view of definition of "plinth area" contained in Section 2(k) of the Act, the

petitioner cannot contend, and is not contending, that ground floor of the building part of which is used for car parking does not form part of "plinth area". However, the question to be considered is whether the area of the ground floor reserved for car parking is entitled to exemption in the determination of plinth area under the proviso to Section 6, which is the claim of the petitioner. In the first place, the provisos to Sections 5(5) and 6 are by way of exception to Sections 2(1) and 5(5) of the Act. While Section 2(1) states that a residential building includes other structures appurtenant to the main building for more beneficial enjoyment of it, the charging Section, namely, Section 5(5) specifically provides for inclusion of plinth area of all such appurtenant structures along with the plinth area of the main building. The question to be considered is what is "appurtenant structure" and whether ground floor of a building can be treated as appurtenant structure. The meaning of the word "appurtenant" as contained in the Black's Law Dictionary, 5th Edn., is as follows:

Belonging to, accessory or incident to, adjunct, appended, or annexed to; answering to accessorium in the civil law. Employed in leases for the purpose of including any easements or servitudes used or enjoyed with the demised premises. A thing is "appurtenant" to something else when it stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter. A thing is deemed to be incidental or appurtenant to, land when it is by right used with the land for it's benefit, as in the case of a way, or water-course, or of a passage for light, air or heat from or across the land of another.

A word takes it's colour and content from the context and setting in which it is used in the statute. Since "appurtenant structures" and "plinth area" thereon are brought under the inclusive definition of residential building u/s 2(1) and for determination of plinth area of residential building u/s 5(5), it is obvious that but for such inclusion appurtenant structures would not have come within the usual meaning of "residential building". Therefore "appurtenant structure" in the context in which it is used in the statute is not part of main building, but is certainly another structure, whether it is attached or annexed to the main building or is an independent structure, in either case intended to be used along with the main structure. The provisos to Section 5(5) and Section 6 are by way of an exception to the inclusions provided under Sections 2(1) and 5(5) of the Act. Therefore the provisos apply only to appurtenant structures and not to any part of the main structure of the building and so much so the exclusion of car parking area claimed by the petitioner, being part of the ground floor of the main structure from "plinth area" is not tenable under provisos to Sections 5(5) and 6 of the Act. The assessing officer therefore rightly declined exemption claimed by the petitioner.

4. The next question is whether a garage, even if it is an appurtenant structure to the main building, is entitled to exemption under the provisos to Section 5(5) and Section 6 of the Act when used for parking of vehicle. It has to be noted that

Sections 2(1) and 5(5) specifically provide that while assessing a residential building plinth area of structures constructed appurtenant to the main building for more beneficial enjoyment of the main building should be added to the plinth area of the main building. Therefore, what is visualised is only a single assessment of a residential unit covering the plinth area of all structures used for residence and incidental to the same. The said single assessment should be of the main building and separate assessments of structures appurtenant to the main residential building are not contemplated. No one can have doubt that a garage used for car parking is required for convenient use of the main building, namely, the residential building. However, there may be situations where structures appurtenant to the residential building and even garage may not be used for the purpose for which it is constructed or meant. For example, if the owner of the building does not have a car, he may use the car garage for storage of materials like firewood. The exclusion provided under the provisos to both the above referred Sections is in respect of structures appurtenant to the residential building though intended for use incidental to residence are not generally not used for the purpose for which it is meant for. In order to claim exemption, it has to be proved that such buildings are used for purposes not connected with residence which includes storage of firewood. Therefore the exemption clause does not provide for exclusion of any appurtenant structure if the same is used for more convenient or beneficial use of the residential building, such as for garage of a car. In other words, a car garage is not eligible for exemption under the provisos to Sections 5(5) and 6 of the Act, if it is used for garage of car. Exception is available only when car garage is used for other purposes like storage of firewood. In other words, the non-residential purpose referred to in the provisos to both the Sections, is a purpose other than for more convenient enjoyment of the building referred to in the charging Section, namely, Section 5(5) of the Act. Therefore I am of the view that as long as a vehicle garage being an appurtenant structure is used for parking of vehicle, plinth area of such garage should be added to the plinth area of the main residential building for assessment, and exclusion applies only when the car garage is generally not used for garage of vehicle, but when used for any purpose other than anything connected with residence. If plinth area of appurtenant structures like car garage, security room, etc., used for more convenient use of the residential building are excluded, then the same will defeat the very object of the charging Section, namely, Section 5(5) which provides for assessment of plinth area of such appurtenant structures along with the plinth area of main building.

5. Petitioner has brought to my notice communication No. 55615/SLMC2/03/RD, dated 2.12.2003 issued by the Addl. Secretary to Government on a query raised by the Revenue Divisional Officer, Kollam, wherein he has stated as follows:

The Revenue Divisional Officer, Kollam, in the letter referred above has requested clarification on the question whether the plinth area of car porch appurtenant to a building can be exempted as provided u/s 5(5) of the KBT Act.

Having examined the case in detail, Government hereby clarify that the plinth area of a car porch appurtenant to a residential building alone can be excluded as per the proviso to Section 5(5) of the KBT Act. But while calculating the plinth area of a building other than a residential building, the plinth area of a car porch cannot be excluded.

According to counsel for the petitioner this is clarification issued by the Government and going by the clarification, the plinth area of appurtenant structure being a car garage cannot be assessed. The clarification applies only to "appurtenant structure being a garage" and not garage being part of main structure. Therefore right or wrong the clarification does not help the petitioner as his garage is part of main structure. Moreover, I do not think Section 4(3) of the Building Tax Act authorises the Government to issue any clarification contrary to the charging Section. The above communication, which is contrary to Section 5(5) as explained above, is without any jurisdiction, and is only to be ignored.

In the circumstances, O.P. is devoid of any merit and the same is dismissed.

In view of confusion created by the above communication of the Government, and the controversy often arising in building tax assessments, Registry is directed to forward a copy of this judgment to the Revenue Secretary to Government, who is directed to circulate the judgment among the revenue officials engaged in building tax assessment. I feel the Building Tax Act particularly Sections 3(1)(b), 5 and 6 need to be amended for smooth implementation.