(2015) 05 KL CK 0023

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1579 of 2012 (V)

Chinnamadath Khadeeja APPELLANT

Vs

The District Collector, Kannur and Others RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:
Kerala Building Tax Act, 1975 — Section 9(2), 9(2)(4)

Citation : (2015) 05 KL CK 0023

Hon'ble Judges : P.V. Asha, J

Bench : Single Bench

Advocate : Sunil Nair Palakkat, K.N. Abhilash and R. Leela, for the Appellant; Sudheesh Kumar, Senior Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.V. Asha, J.

1. The petitioner challenges the assessment of building tax in respect of her residential building, as per Ext. P3 order. The petitioner is the owner of House No. TMC-19/497 of Thaliparamba Municipality. She claims that the house was constructed in the year 1978 in ''Thaliparamba Municipality''. A notice was issued to her under Section 9(2) of the Kerala Building Tax Act directing her to appear before the 2nd respondent Tahasildhar on 7.12.2006 and to file objection if any against the proposed assessment of tax. In answer to the said notice petitioner submitted Ext. P2 objection saying that she constructed the house in the year 1978 and has been residing there since then in the House No. TMC-19/497. It is stated that she produced Ext. P1 certificate issued by the Thaliparamba Municipality on 6.12.2006, according to which the said building stands in the name of the petitioner and as per the assessment register the petitioner has been paying building tax in respect of the said building No. 19/497, since the year 1978. In the objection, petitioner pointed out that the total value of the building is Rs. 75,000/- and she had already paid tax based on assessment already made and there is no provision for a further assessment. She also

referred to a report submitted by the Village Officer regarding the rent of the building, assessed as Rs. 1,500/- per month, without any basis for such an assessment. It was further submitted that the officer in charge does not have an authority to fix the monthly rent of the building and hence his report cannot be accepted under the Provisions of the Building Tax Act. Subsequent to filing of Ext. P2 objection the petitioner received Ext. P3 assessment order issued under Section 9(2) of the Building Tax Act, wherein a sum of Rs. 10,200/- was fixed as building tax.

2. This Writ Petition is filed challenging the same alleging that the Ext. P3 is passed in violation of the principles of natural justice; there is no provision in the Building Tax Act to initiate proceedings against persons who constructed the building before the appointed day i.e. 10.2.1992. According to her she constructed the building in 1978 and building tax was already assessed and paid then. The learned Counsel submits that the impugned order is a printed one, passed without considering any of her objections.

3. This court had by order dated 19.01.2012, stayed further proceedings based on Ext. P3 order. It is seen that on 25.6.2012 this court had issued another order directing the petitioner as follows:-

"Petitioner is directed to produce copy/extract of the building assessment register of the Municipality.

Post after two weeks. Status quo will continue for a period of one month, on condition that the petitioner deposits the first two quarters in respect of the liability assessed as per Ext. P3, within ten days".

4. But no further action, as directed therein is seen taken by the petitioner. It is seen that even before the aforesaid direction was issued on 26.8.2012 the petitioner had filed an affidavit dated 24.6.2012 producing certain tax receipts issued in her name issued by the Thaliparamba Panchayath on 23.9.1980, 25.2.1986 and 26.10.1988 in respect of building No. TP VII-386 as Exts. P4 to P6 and Exts. P7 to P9 receipts issued by the Thaliparamba Municipality on 6.8.1991, 5.8.1992 and 17.11.1993.

5. The 2nd respondent filed a counter affidavit on 22.6.2012 produced Ext. R2(a) which is the same as Ext. P8, and stoutly denied the allegations of petitioner. It is stated that the assessment was made after notice to petitioner, on receipt of report of the Village Officer Thaliparamba, who inspected the building and as per his report the petitioner''s building is one constructed after 1992 and has a plinth area of 298.64 Metres. On the basis of his report a notice was issued to petitioner under Section 9(2)(4) of the Building Tax Act calling for objections if any, against the proposed assessment. Petitioner had appeared through her counsel and filed objection in which she claimed that building No. 19/497 was constructed in 1978. 2nd respondent stated that the building in respect of which the assessment is made, is a separate new building constructed in 1992 and there does not exist the old building having door No. 19/747, which was

constructed in 1978. According to them in Ext. R2(a)/Ext. P8 receipt the building is described as ''new''. The 2nd respondent have seriously disputed the genuineness of Ext. P1 certificate produced by petitioner and the authority of the Municipality, to issue such a certificate, as it does not state whether the building No. 19/497 referred to therein is still in existence and the Municipality came into existence only in the year 1992. According to the respondents the petitioner has misrepresented the facts in collusion with the Secretary, Thaliparamba Municipality and the same warrants initiation of proceedings against them. In paragraph 6 it is stated as follows:

"As regards the averments in paragraphs 1 and 2, it is submitted that the building having No. TMC. 19/497 as per Ext. P1 owned by the petitioner claimed to be constructed in 1978 does not existed at present. In its place a new double storied building was constructed in the year 1992. The claim of the petitioner that the building presently owned by the petitioner was constructed as early as in 1978 is not correct. A copy of the tax receipt No. 23545 dated 5.8.1992 issued by the Taliparamba Municipality and produced before the 2nd respondent by the petitioner herself revealed that the building in question was constructed in the year 1992. It is specifically recorded in the column 2 of the receipt as "new". The same is produced as Exhibit R3(a)."

6. The counter affidavit was filed as early as on 22.6.2012. Moreover this court had already issued a direction to the petitioner to produce copies for exact building assessment register. The petitioner has neither produced any material subsequent to the issuance of the above directions nor has filed any reply affidavit.

7. Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents.

Having regard to the seriously disputed facts and the contentions raised on either side I am of the view that the matter requires detailed consideration as to the date of construction of the building and a decision thereafter with reasons with reference to the objections. As the reasons leading to Ext. P3 are already explained by the 2nd respondent in the counter affidavit filed in this case, it is upto the petitioner to produce documents if any, in support of her claims at or before the time of hearing. In the event of such production of any materials, the 2nd respondent shall consider the same. For the limited purpose of reconsideration, I quash Ext. P3 order and direct the 2nd respondent to pass fresh orders after affording an opportunity of hearing to the petitioner, within a period of 2 months from the date of receipt of a copy of the judgment.

This Writ Petition is disposed of accordingly.

