
(2014) 11 KL CK 0118
In the High Court Of Kerala
Case No : W.P.C. No. 3574 of 2007

C.P. Dhanesh

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 15

Citation : (2014) 11 KL CK 0118

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

Bench : Single Bench

Advocate : N.N. Sugunapalan, Sr. Advocate and M.C. Gopi, Advocate for the Appellant; Lilly K.T., Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—Petitioner's father had constructed the ground floor of a building in the year 1987-1988. On the said construction, he was assessed to building tax as evidenced by Ext. P1 order. The said tax was paid by him. It would appear that, on the basis of the consent given to the petitioner's wife by the father-in-law, she had constructed the first floor of the said building in the year 1992. In respect of the said construction, building tax was paid, pursuant to Ext. P3 assessment, by the petitioner's wife. Still later, in the year 1998, the petitioner undertook the construction of the 2nd floor of the building. On completion of the said construction, the petitioner was assessed to building tax as per Ext. P5 order. It is not in dispute that this tax amount was also paid by the petitioner. Thereafter, by Ext. P6 order dated 24-3-2006, the Tahsildar appears to have re-assessed the building to building tax by treating the entire building as one and subjecting the total plinth area covered by the building to tax, after deducting the amounts already collected from the petitioner under Ext. P5 assessment order. Aggrieved by Ext. P6 order, the petitioner preferred an appeal before the 2nd respondent which was rejected by the 2nd respondent by Ext. P8 order remanding the matter to the Tahsildar for fresh consideration after finding that there was no merit in the contentions raised by the petitioner. The petitioner, therefore, preferred a revision against Ext. P8 order before the first

respondent which was also rejected by Ext. P9 order dated 6-12-2006. In the Writ petition, the petitioner impugns Exts. P6, P8 and P9 orders.

2. A counter affidavit has been filed by the respondent wherein the sequence of events leading to the passing of the impugned orders is narrated and it is pointed out that the petitioner had not produced any documents to show that the different floors of the building were under separate ownership for the purpose of seeking separate assessment under the Building Tax Act. It is also pointed out that in the returns submitted by the petitioner, he had mentioned only about the tax amount that was paid by him pursuant to Ext. P5 assessment order. It was under these circumstances, that the Tahsildar proceeded to issue Ext. P6 assessment order assessing the constructions, effected after the cut off date, to building tax by treating the entire area covered by the construction as a single unit for the purpose of building tax.

3. I heard Sri. Gopi, the learned counsel appearing for the petitioner as well as the learned Government Pleader Smt. Lilly.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that, even without going into the merits of the orders passed by the first and second respondents, this is a case where the Tahsildar has passed a revised assessment order (Ext. P6), assessing the building to tax. While doing so, the Tahsildar also found that the ground floor, first floor and the second floor of the building had been independently assessed, at various stages, to building tax and the said tax amount had been collected from the respective owners. Exts. P1, P3 and P5 are the assessment orders passed in respect of the ground floor, first floor and second floor of the building. Insofar as the petitioner is concerned, he was subjected to assessment in respect of the second floor of the building by Ext. P5 order. While issuing Ext. P6 order, the Tahsildar was, in effect, revising Ext. P5 assessment order pertaining to the petitioner. There is no provision under the Building Tax Act enabling the Tahsildar to suo motu revise or review an assessment already done in respect of the building. Even the power of rectification under Sec. 15 enables the assessing authority to rectify any mistake apparent from the record of the assessment only within a period of three years from the date of assessment. In the instant case, Ext. P6 order is dated 24-3-2006 whereas the earlier assessment done on the petitioner by Ext. P5 was on 28-01-2000. In that view of the matter, Ext. P6 order cannot be legally sustained even if it is treated as one passed in exercise of the rectification power under Sec. 15. Thus, in any view of the matter, Ext. P6 order of the Tahsildar cannot be legally sustained. Accordingly, I quash the same and declare that the 3rd respondent Tahsildar does not have the power to re-open Ext. P5 assessment already done on the petitioner. In view of the said declaration, Exts. P8 and P9 orders have also to be quashed and I do so. It is clarified that, if any, additional constructions beyond the 2nd floor (that was the subject matter of the assessment under Ext. P5 order) has been subsequently effected by the petitioner, then it will be open to the respondents to assess the

said additional constructions in accordance with the Kerala Building Tax Act, 1975. The findings in this judgment are only in respect of the assessment done in respect of the ground floor, first floor and second floor of the building.