(1999) 04 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No. 3904 of 1998.

C.V. Sukumaran — APPELLANT

Vs

Tahsildar and Others — RESPONDENT

Date of Decision : 09-04-1999

Acts Referred:
Kerala Building Tax Act, 1975 — Section 2(1), 5(3)

Citation : (1999) 1 KLJ 1014

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : Jommy Tharian, for the Appellant; V.V. Asokan, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Petitioner is the owner of a three storeyed building in Sy. No. 899 of Ernakulam Village. The building is newly constructed. The ground floor is used as a go down and first and second floors are used as residential buildings. Each floor is separately numbered. The petitioner was assessed to building tax treating the building as ''other buildings''. Petitioner''s claim is that since the entire building is used for residential purpose and used by himself, it should be assessed as residential building. That was rejected and the building was assessed as ''other building''. The appeal and revision petition filed were dismissed. Even though petitioner himself is using the ground floor, it is used as a go down. So, that part of the building is not used for ''residential purpose''. But the other two floors are used exclusively for residential purpose. First floor is used for residence of employees and second floor is used for residence of petitioner. Even if first floor is let out for residential purpose, these two floors are built for residential purpose, and exclusively used for the same purpose. Hence these two floors can be assessed as residential building.

2. Under Sec. 2(1) of the Building Tax Act, 1975 (hereinafter referred to as ''the Act'') ''residential building'' is defined as follows:

(1) ''residential building'' means a building or any other structure or part thereof built exclusively for residential purpose including outhouses 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.

If part of the building is exclusively used for residential purpose that part can be assessed as residential building and entire building cannot be assessed as ''other building''. Therefore, the two floors (first and second floors) which are numbered separately and used exclusively for residential purpose can be assessed as residential building and the other part, the ground floor, can be assessed as ''other building''.

3. Even though no counter is filed denying the factual situations, the facts for deciding the case are clear from Exts. P2 and P3. Learned Government Pleader submits that Government issued a circular under Sec 30 of the Act, clarifying that if any part of the building is used for commercial purpose and other parts exclusively for residential purpose, entire building should be classified as ''other buildings''. Such a clarification is inconsistent with the provisions of the Act especially Sec. 2(1) of the Act which defines ''residential building''. Under the above definition part of the building or structure exclusively used for residential purpose is a residential building. Sec. 5(3) and 5(5) and proviso to Sec. 6 makes it further clear. In this case, first and second floors of the building are specifically identifiable and that part of the building are separately numbered by the local authority. They are constructed for residential purpose and used exclusively for residence. Therefore, that portion, that is first and second floor of the building, can be assessed as residential building. However, petitioner''s contention that since ground floor used for non-residential purpose by the petitioner himself, it is appurtenant to the main residential building, that is first and second floors, and hence the entire building has to be assessed as a ''residential building'' cannot be accepted. Ground floor of the building used for non-residential purpose can be assessed only as ''other-building''. Similarly worded, proviso to Sec. 5(5) and Sec. 6 quoted below makes it clear. The proviso to Sec. 5(5) states that:

Provided that the plinth area of a 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 the plinth area of that building.

It shows that even in a residential building if a structure is used for non-residential purpose, its plinth area need not be added to that of residential building. But, that structure can be separately assessed as ''other buildings'' as per the schedule if it is otherwise assessable. Therefore, fresh assessment should be made keeping in mind the principles mentioned in this judgment. Consequently, Exts. P1, P2 and P3 are set aside and the assessing authority is directed to pass a fresh Order of assessment treating ground floor of the building as ''other building'' and first and second floors as ''residential building''.

The original petition is allowed to the above extent.

