
(1994) 02 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 4905 of 90-H

Dr. M.M. Mathew

APPELLANT

Vs

Tahsildar and Another

RESPONDENT

Date of Decision : 04-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Building Tax Act, 1975 — Section 13, 13(2), 5(2), 6(4)

Citation : (1994) 02 KL CK 0007

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : Chacko George, for the Appellant; S. Vijayan Nair, Government Pleader, for the Respondent

Judgement

T.L. Viswanatha Iyer, J.—Petitioner has constructed a building in the Vadakkancherry Panchayat in Palakkad district. It is a substantial one with a plinth area of 2022 sq. ft. There is controversy as to when it was completed, whether it was in 1977 or in 1981. I do not propose to go into that question as it is unnecessary and irrelevant for the purpose of this writ petition. The Petitioner was assessed to tax under the Kerala Building Tax Act, 1975 (the Act) in respect of this building. His case was that the capital value of the building was only Rs. 35,000 and thus, below the assessable limit. But the assessment, Ext. P-2, was completed on 23rd July 1988 on a capital value fixed at Rs. 1,06,801 with a tax liability of Rs. 386. Having regard to the very small amount involved, and the substantial nature of the building one would have expected the Petitioner not to expend his time, energy or money in fighting the matter further, but that is what precisely he did and with disastrous results, which, in my opinion, were fully deserved, on the facts of this case. His appeal before the Revenue Divisional Officer was rejected as time barred. But he moved the District Collector in revision u/s 13, which was disposed of by the order (Ext. P-4) dated 27th February 1990. It is a detailed well considered order well ratiocinated and well supported by facts and figure. I would, in fact, have upheld it as not meriting any

interference in writ jurisdiction, but for the jurisdictional flaw vitiating it , to which I shall presently advert.

2. The District Collector held that the building with a plinth area of 2022 sq. ft. would easily have fetched, at the time of construction, a rent which could be anything from Rs. 2,022 to Rs. 4,044 per month having regard to the prevailing rates of rent in the locality, about which he gave facts and figures. He, therefore, held that the capital value should range between Rs. 2,42,640 and Rs. 4,85,280. Accordingly, he set aside the order of assessment and remitted the matter back to the assessing authority for making a fresh assessment, fixing the capital value after taking into account the rent which would be received for such buildings, if let out, in the locality, considering all the factors mentioned in Section 6(4) of the Act. Petitioner filed this writ petition under Article 226 of the Constitution challenging Ext. P-4. Soon thereafter, the order Ext. P-4 was implemented, and a revised order of assessment Ext. P-7 was issued fixing the capital value at Rs. 3,96,252 with a liability for tax of Rs. 14,238. Petitioner then amended the original petition challenging the proceedings Ext. P-7 as well and the consequential demand Ext. P-8.

3. The order Ext. P-4 was passed on a revision petition which the Petitioner had filed before the District Collector u/s 13 of the Act. Thereunder, the District Collector could, either suo motu or on application by the Assessee, call for and examine the record of any order passed by the appellate authority or the assessing authority, and pass such order with reference thereto as he deems fit. But an order could be taken in suo motu revision only within a period of three months from the date of that order see Sub-section (2). To put it negatively, suo motu proceedings in revision are not permitted after the lapse of three months from the date of the order. The order of assessment Ext. P-2 in this case was passed on 23rd July 1988 so that a suo motu revision of that order was barred at the time the District Collector passed the revisional order Ext. P-4 on 27th February 1990.

4. There can be no doubt having regard to the findings rendered in Ext. P-4 that the capital value as per the fresh revised assessment could not be anything less than Rs. 2,42,640 a fact which was substantiated by the revised order Ext. P-7 fixing the capital value at Rs. 3,96,252. Now, an Assessee approaches an appellate or revisional forum for relief or redress of a grievance in respect of an assessment made on him, as he is the party dissatisfied with the assessment. He cannot, by virtue of such approach, be put in a worse position than what he was, by the appellate or revisional authority enhancing the assessment, unless such a power of enhancement is conferred by the statute in question. See *Vijaya Stores v. State of Kerala* 1975 KLT 569 and *State of Kerala v. Vijaya Stores* 1978 KLT 802 on appeal, See also *Bharat Kumar v. Administrator* 1990 (1) KLT 800 where I have considered and discussed these and other cases in detail in relation to the enhancement of punishment by an appellate authority in disciplinary proceedings. The question therefore is whether the enhancement in this case

was authorised by Section 13. No doubt, the Section empowers the District Collector to exercise powers suo motu in respect of any order of the assessing or appellate authority functioning under the Act. This will include the power of enhancement of an assessment, but that power has to be exercised within the time frame prescribed by Sub-section (2) of Section 13. The power of revision on application by the Assessee cannot be exercised in such a manner as to tantamount to exercise of power suo motu for enhancing the assessment, beyond the period limited by Sub-section (2). Such an exercise will be doing something indirectly which cannot be done directly. I may not however be understood as laying down that a revisional authority cannot exercise suo motu power of enhancement while dealing with a revision filed by the Assessee, I am only saying that such exercise is possible only if he puts the Assessee on notice of the proposed enhancement and only if he exercises the power within the period of time prescribed by Sub-section (2).

5. So far as this case is concerned, there could not be any exercise of the suo motu power of revision having regard to the expiry of three months from the date of Ext. P-2, by the time the order Ext. P-4 was passed. Therefore, all that the District Collector could have done was either to allow the revision in whole or in part or to dismiss it. He could not have set aside the order with directions virtually to enhance the capital value. The direction contained in Ext. P-4 is therefore not warranted by Section 13 of the Act. Ext. P-4 is liable to be quashed along with the consequential order Ext. P-7 and the demand Ext. P-8.

6. Accordingly I quash the proceedings Exts. P-4, P-7 and P-8. The revision petition filed by the Petitioner is remitted back to the District Collector for fresh disposal according to law.

7. Section 5(2) of the Act has undergone an amendment by the Kerala Finance Act 13 of 1993 under which building tax is liable to be assessed on the basis of the plinth area at the rates specified in the schedule. This applies to all buildings constructed before the appointed day, namely 10th February 1992 on which the proceedings for assessment have not been initiated or completed, or against which any appeal or revision has been filed. The provision is thus retrospective to the extent it mandatorily applies to all pending assessments, appeals and revisions. All these have to be completed/disposed of u/s 5(2) as amended. Since the quashing of the order Ext. P-4 revives the revision petition before the District Collector, it has got to be disposed of in the light of Section 5(2) as amended irrespective of whether the Petitioner's liability for tax as per Ext. P-2 is increased or decreased thereby. There will be a direction accordingly. The District Collector is directed to dispose of the revision petition in the light of the above observations with all expedition and as far as possible within a period of three months of the date of receipt of a copy of this judgment, with opportunity to the Petitioner to be heard.