(2014) 09 KL CK 0092

In the High Court Of Kerala

Case No : WP(C). No. 13705 of 2009 (G)

Eapen Chacko APPELLANT

Vs

The Tahsildar RESPONDENT

Date of Decision : 30-09-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 7(3)

Citation : (2014) 09 KL CK 0092

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

Bench : Single Bench

Advocate : Reji George, Mohan Pulikkal and A. Amrutha Vidyadharan, Advocate for the Appellant; Liju V. Stephen, Sr. Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—Exhibit P14 assessment order passed by the 1st respondent, levying building tax on the building constructed by the petitioners, is impugned in the writ petition. It is the case of the petitioners that the building in question was originally assessed for building tax in the year 2005. While completing the assessment in 2005, the assessing authority had taken into consideration the building as it then stood which, according to the petitioners, also contained the modifications that had been effected to the building by the petitioners, in the form of a tin roofing, on top of the building, so as to prevent water seepage during monsoon through cracks that had developed in the ceiling of the building.

2. Exhibits P9 and P9(a) are the assessment order and demand notice that were issued to the petitioners in connection with the assessment that was conducted in 2005. It is the case of the petitioners that thereafter, by Exhibit P10, notice dated 20.05.2008, issued under Section 7(3) of the Kerala Building Tax Act, 1975, they were asked to submit fresh returns in respect of an alleged additional construction that was effected by them. It is pointed out that there were no details furnished in the said notice issued to them, with regard to the additional

construction which, according to the respondents, had been effected by the petitioners. Under these circumstances, the petitioners were not able to furnish any revised return to the 1st respondent Tahsildar. The 1st respondent Tahsildar, therefore, proceeded to pass Exhibit P11 order dated 03.06.2008, fixing the building tax on the building belonging to the petitioners at an amount of Rs. 2,21,400/-. As Exhibit P11 order had been passed without hearing the petitioners, and without considering any of the objections that they proposed to file, the petitioners approached this Court through W.P. (C) No. 20743 of 2008 impugning the said order. By Exhibit P12 judgment, Exhibit P11 order of the 1st respondent Tahsildar was quashed and the Tahsildar was directed to reconsider the matter after considering Exhibit P13 objection preferred by the petitioners against the assessment that was proposed. It is thereafter, that Exhibit P14 order dated 02.03.2009 was passed by the 1st respondent Tahsildar. In Exhibit P14 order, the Tahsildar takes a stand that the building in question being one that was residential cum commercial, and the decision relied on by the petitioners namely Padmanabhan K. Vs. The State of Kerala and Others, , having been rendered in a case that involved a residential building, could not be applied to the case of the petitioners and hence confirmed the proposal to levy the building tax at the amount of Rs. 2,59,200/-. Exhibit P14 order is impugned in the writ petition inter alia on the ground that the distinction sought to be made by the 1st respondent Tahsildar, in connection with the applicability of the decision of this Court in Padmanabhan''s case (Supra) is one that does not survive in view of the later pronouncement of the Division Bench of this Court in State of Kerala Vs. Southern Fisheries Corporation, .

3. I have heard Sri. Reji George, the learned counsel for the petitioners and also Sri. Liju V. Stephen, the learned Senior Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that Exhibit P14 cannot be legally sustained. On a perusal of Exhibit P14 order, it is apparent that while it does not expressly take into account the objections raised by the petitioners with regard to the liability to pay building tax in respect of the building, on the contention that there was no additional construction that was effected by the petitioners, the 1st respondent Tahsildar, in the said order, also erred in not following the decision of this Court in Padmanabhan''s case (Supra). As already noted, the decision of the Single Judge in Padmanabhan''s case (Supra) was since affirmed by the Division Bench in State of Kerala & amp; Ors.''s case (Supra), wherein the specific contention of the Government Pleader, that the earlier decision was rendered in the context of a residential building, whereas the case before the Division Bench involved a commercial building, was rejected by the Court, by observing that in so far as the levy of building tax was concerned, there could not be a difference between residential buildings and commercial buildings for the purpose of determination of the plinth area. In that view of the matter, I feel Exhibit P14 cannot be legally sustained.

Resultantly, I quash Exhibit P14 as legally unsustainable. The 1st respondent Tahsildar shall pass fresh orders in the matter taking note of the decisions of this Court referred to above and ascertaining the actual plinth area of the building in question, by excluding the areas specified in the judgments referred to above. Fresh orders in the matter shall be passed by the 1st respondent Tahsildar within a period of two months from the date of receipt of a copy of this judgment. It is also made clear that nothing in this judgment shall prevent the 1st respondent Tahsildar from pursuing fresh steps for levying building tax in the event of any additions or alterations made to the building by the petitioners.

The writ petition is disposed as above.

