(1989) 06 KL CK 0027

In the High Court Of Kerala

Case No : O.P. No''s. 2538 and 4429 of 1989 B

James Varghese APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 06-06-1989

Acts Referred:

Kerala Building Tax Act, 1975 — Section 11, 12, 13, 16, 2
Kerala Building Tax Rules, 1984 — Rule 15

Citation : (1989) 06 KL CK 0027

Hon'ble Judges : Sukumaran, J

Bench : Single Bench

Advocate : T.P. Kelu Nambiar and Devakikutty, in O.P. No. 2538 of 1989 and George Varghese Kannanthanam, in O.P. No. 4429 of 1989, for the Appellant; Molly Jacob, Government Pleader, for the Respondent

Judgement

Sukumaran, J.—Building is a beauteous concept. It has a positive content; a constructive direction; and a perfecting dimension. Small of big does not matter when it comes to building: a bird''s nest, or a sky scraper, Many even build castles in the air Latham noted how in ancient Egypt people build huts for the living and pyramids for the dead. Around it much of sentiments and emotions centre around. Temples, churches and mosques have their spiritual halo. Deep emotions or disciplinary virtues give the building a greater significance: such as in the case of Taj where affection crystallised itself into a glorious beauty; such as in the Gothic cloisters, which inspired Lord Atkin to coin that term ''cloistured virtue''.

2. Building techniques had varied very much depending on the clime and time. To the Chinese, who built the Great wall, use of stone instead of wood for the construction of the buildings in the reign of Asoka caused much wonder. Nero''s palace is referred to as the most pretentious of all homes. Mansion, Lexicographers say only meant a place one lives in. ''So was residence, which splits into re, "black", and sedeo, "sit" making up ''residence'' as a place where one sits back and takes it easy. Bungalow, the one or one-and-a-half story

houses, derived from the Hindustani word ''bangla'', meaning "of Bengal", (which got into English in the 17th century) and is a contribution of East India architecture. (See ''word origins'' by Wilfred Funk). The tax man even did not spare the window when English window Tax was imposed.

3. In the realm of law, building activity brought in its wake many legal thoughts. Hudson''s ''Building Contract'' and texts of that kind and the profuse case law of recent times reflect the pervasive nature of the interconnection between Law and Building.

4. The administrators viewed building activity with added interest. Quite often, it was a good source of revenue. From the time the design was made, upto the time the construction was complete, the tax gatherers riveted their eyes on the activities.

5. In Kerala, the Building Tax was initially imposed under an Ordinance of 1974. It was replaced by the Kerala Building Tax Act, 1975, Act 7 of 1975. Its constitutionality was under serious challenge. The challenge was repelled by a Full Bench, though with a dissent. Ultimately, the apex Court upheld its validity in D.G. Gose and Co. (Agents) Pvt. Ltd. Vs. State of Kerala and Another, .

6. The 31-sectioned Act, had a subordinate legislation in the form of 15 Rules. Section 2(e) of the Act defines ''Building''. The charging section is Section 5. The taxing authorities were those to be notified u/s 4. Under the notifications, Tahsildars are the assessing authorities, and the Revenue Divisional Officers, the Appellate Authorities. The District Collector, by a specific statutory provision, Section 13, got powers of revision. The District Court could exercise a limited jurisdiction when a reference was made to it u/s 12. The Government too had revisional powers as indicated in Section 16, and the exclusive jurisdiction to decide the references u/s 3.

7. The writ Petitioners were assessed to building tax. Though available, the appellate remedy was not availed of by them. They filed revision petitions instead, before the District Collector. The District Collector took the view that a revision is not maintainable, when the party has failed to appeal.

8. The orders are under challenge. Smt. Devakikutty appearing for the Petitioner in O.P. 2538 of 1989 launched the aggression of arguments; Counsel for the Petitioner in O.P. 4429/89 adopted and supported them. Mrs. Molly Jacob, Government Pleader tenaciously attempted the resistance.

9. The writ petitions pose only a simple question. Can an aggrieved Assessee choose between his remedies-An appeal u/s 11 or a revision u/s 13, the former before the R.D.O. and the latter before the Collector?

10. Sub-section (1) of these two sections, would call , for greater attention while tackling this controversy.

11. Appeals.- (1) Any Assessee objecting to the amount of building tax assessed

u/s 9 or denying his liability to be'' assessed under this Act or objecting to any order of the assessing authority under this Act may appeal to the appellate authority against the assessment or against such order:...

13. Power of Revision of the District Collector: (1) The District Collector may, either "suo motu" or or; application by any person aggrieved, call for and examine the record of any order passed by the appellate authority or the assesssing authority and may pass such order in reference thereto as he thinks fit:...

11. A simple dissection of Section 13 would separate it into two parts, one where the Collector on his own takes up the revisional jurisdiction and the other where his jurisdiction is invoked by a desirous person, an aggrieved Assessee. The revisional power of the Collector is available both as against the orders of the Appellate Authorities and the orders of the assessing authorities.

12. Some other provisions, although not strictly relevant for the consideration of the question, may be noted in passing. The second proviso introduces an embargo in the exercise of the revisional power in certain situations, such as when the period of thirty days specified tor presentation of appeal has not expired; or when an appeal is pending before the Appellate Authority. There are some additional areas of prohibition for the revisional power such as against an order on the basis of a reference u/s 12, and one when the order passed in suo motu jurisdiction beyond three months.

13. Many taxing and other enactments contain similar schemes of providing by way of remedies, an appeal and a revision. Taxation enactment, General statutes like those dealing with co-operation and education, and even Taxation enactments have somewhat similar schemes providing for a dichotomy of remedies. The Indian Tax Act, 1922 had provisions with closer similarity. The question whether with a wider and more liberal appellate forum, a revisional jurisdiction could co-exist, had also been considered from very early times, while construing such provisions.

14. On the basis of reasoning available on statutes in pari materia, it can be safely held that an Assessee can invoke the powers of revision of the District Collector, without knocking at the doors of the Revenue. Divisional Officer. The RevMonal Authority has, unlike the appellate one, only comparatively attenuated powers. The question is not about the amplitude of the power, but about its very existence. The answer is: the power exists, the limitation in the exercise of the power notwithstanding.

15. Useful thoughts on this aspect were given by the Madras High Court, very many years back, in A. Vs. SREENIVASALU NAIDU v. COMMISSIONER OF Income Tax MADRAS., . It is unnecessary to catalogue the various decisions which have adopted the reasoning and conclusion of'' that decision. Dhankaur and Others Vs. State of Rajasthan and Others, decided in the context of the Rajasthan Agricultural Income Tax Act, is one of the later decisions upholding that logic. A

cognate provision in the Co-operative Societies Act was adverted to by a Division Bench of this Court, (Malimath, C.J. and Sukumaran, J.) in Thankappan v. Trivandrum Dt. Co-operative Bank Ltd. 1986 KLT 263. The following is an appropriate abstract from the observation of the Bench:

An examination of these provisions would reveal that the legislature had conferred two remedies on a person aggrieved by the award of an Arbitrator, the choice of. which was entirely dependent upon the preference of the party.

(emphasis supplied)

16. In the context of the statutory scheme of the Building Tax Act also, the same conclusion follows.

17. It is unnecessary to refer in detail to other decisions such as Haneefa v. Stats of Kerala 1978 KLT (S.N.) 30. rendered under the Kerala Education Rules, and Tessy Kuruvilla. v. Agrl. I.T. Officer 1984 KLT (SN) 74 . rendered under the Agricultural Income Tax Act.

18. In the light of the above discussion, I quash the impugned ofders passed by the District Collector. The revision petitions will be taken up afresh by the Collector, and disposed of on merits, in accordance with law.

19. Way back in 1987, Sreedharan, J. took a similar view, but essentially based on concession. (It is somewhat'' risky to follow in these days the decisions based on concessions. That is the caution given by the Supreme Court, when Venkataramaiah, J. speaking for the Court in Hindustan Paper Corpn. Ltd. Vs. Government of Kerala and Others, observed: "concession is neither here nor there". (The Supreme Court gave in that case an interpretation, contrary to the one adopted by a Bench of this Court on the basis of concession). A Vigilant Government Department, could have given useful guidance to subordinate functionaries on matters of such a general nature, so that such valuable time of the District administrative heads could have been spent on more useful purposes.

The writ petitions are disposed of as above. I do not make any order as to costs.