(2013) 06 KL CK 0059

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15241 of 2012

Jessy Mathew APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 20-06-2013

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

Citation : (2013) 4 KLJ 349 : (2013) 3 KLT 246

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Anil S. Raj, K.N. Rajani, Anila Peter, G. Arun Gopan and J. Vivek George, for the Appellant; T.K. Shaij Raj, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V. Chitambaresh, J.—The petitioners are wife and husband who challenge the concurrent orders of assessment made under the Kerala Building Tax Act. It is asserted that the wife is the owner of the ground floor and the husband is the owner of the first floor of the building. The respondents have assessed tax as if the whole building belongs to one and the same person. The total plinth area of the two floors has also been reckoned for the purpose of assessment of tax under the Kerala Building Tax Act. The following factors are significant:--

(i) Ext. P3 completion plan approved by the Nayarambalam Grama Panchayat indicates that the ground floor belongs to the wife and the first floor belongs to the husband.

(ii) Exts. P3 and P4 certificates issued by the State Bank of Mysore reflect that the wife was granted housing loan for the construction of the ground floor and the husband was granted housing loan for the construction of the first floor of the building separately.

(iii) Exts. P6 and P7 receipts indicate that the two floors have been assigned different door numbers and that the building tax has been realised by the

Panchayat from the wife and husband separately.

2. There is no warrant for the conclusion that the entire structure belongs to one and the same person and that the total area has to be reckoned for the purpose of tax. Different floors can be owned by different persons as per the scheme of the Kerala Building Tax Act. The ''owner'' has been defined under S. 2(i) of the Act as a person entitled to receive rent and the liability to pay tax under S. 5(6) of the Act is on its ''owner'' only. Each floor has to be deemed to be a separate building when the cost of construction has been met jointly as evident by Explanation 2 to S. 2 of the Kerala Building Tax Act, 1975. Exts. P8, P9 and P10 orders passed by respondents 3, 2 and 1 respectively are vitiated by an error of jurisdiction. The liability to pay tax as demanded under Ext. P11 order would arise only if both the areas of the ground floor and the first floor are totaled. I have no option except to quash Exts. P8 to P11 orders under such circumstances. The third respondent is directed to re-assess the tax under the Kerala Building Tax Act in respect of the separate floors as against the wife and the husband separately. The needful shall be done within a period of two months from the date of receipt of a copy of this judgment.

The Writ Petition is allowed. No costs.