
(2006) 10 KL CK 0046
In the High Court Of Kerala
Case No : O.P. No. 3090 of 2002

John

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Kerala Municipalities Act, 1994 — Section 238, 239, 239(1), 239(2), 239(3)

Citation : (2006) 4 ILR (Ker) 653 : (2006) 4 KLT 932

Hon'ble Judges : A.K. Basheer, J

Bench : Single Bench

Advocate : Varghese C. Kuriakose, for the Appellant; M.K. Chandra Mohandas and Waheeda Babu, Government Pleader, for the Respondent

Judgement

A.K. Basheer, J.—Is respondent No. 2, the Corporation of Cochin, justified in rejecting the application submitted by the petitioner for remission of building tax during the period of its non-occupation on the ground of delay? Shorn of unnecessary details, the essential facts relevant for adjudication of the issue are stated hereunder.

2. Petitioner is the owner of a three storied building within the limits of Cochin Corporation. According to him the second and third floors of the said building were not occupied either by him or by any tenant from April 1, 1999 to September 30, 1999. On April 9, 1999 he submitted an application for remission of building tax during the relevant half year period. The said application was rejected by the Corporation on the ground that it was not submitted within the stipulated period. A similar application for remission submitted by the petitioner on April 5, 2000 for the period from April 1, 2000 to September 30, 2000, was also rejected on the same ground. True photo copies of the communication issued by the Corporation in this regard are on record as Exts.P9 and P10. Petitioner seeks to get the above communications quashed in this Writ Petition. There is a further prayer to issue a writ of mandamus or such other appropriate writ or direction to the Corporation and its Revenue Officer to dispose of similar

applications for remission for the half year periods starting from October 1, 2000 till March 31, 2002.

3. The short question that falls for consideration is whether the benefit of remission of building tax can be denied to an assessee on the ground that he had made the request for remission after the commencement of the period for which remission was sought. It is contended by the Corporation that the assessee will not be entitled to get remission if he does not give notice to the Corporation prior to the commencement of the relevant half year period.

4. Section 239 of the Kerala Municipality Act, 1994 (for short the Act) which deals with vacancy remission is quoted hereunder:

239. Vacancy remission:-

(1) When any building, whether ordinarily let or occupied by the owner himself has been vacant and unlet for a half year, the owner shall be entitled to a remission of tax for that half year.

(2) If the owner had already paid the tax in respect of a half year in which a remission is due, he shall be entitled to get either refund or shall be entitled to get the amount adjusted in the tax for the succeeding half year.

3(a) No such remission shall be admissible unless the owner of the building or his agent has previously thereto delivered notice to the Secretary;

(i) that the building is vacant and unlet, or

(ii) that the building will be vacant and unlet from a specified date either in the half year in which notice is delivered or in the succeeding half year.

(b) Every notice under Clause (a) shall expire with the half year succeeding the half year during which it is so delivered and shall have no effect thereafter.

The Corporation lays emphasis on Sub-section (3) of Section 239 and contends that the owner of the building will not get the benefit of remission if he or his agent fails to deliver notice to the Secretary requesting for remission in advance. In other words, the contention is that the assessee concerned ought to submit the application for remission before the commencement of the half year period in question, informing the Secretary of the Corporation that the building is vacant and unlet or that the building will be vacant and unlet from a specified date, either in the half year in which notice is delivered or in the succeeding half year. It is contended, that the above Clause which prescribes giving of "previous notice" to the Corporation about the non-occupation has to be strictly construed and interpreted because, grant of remission is a concession in derogation of the statutory liability to pay tax under normal circumstances. Therefore the assessee has to necessarily comply with the statutory mandate and give notice well in advance, before the commencement of the half year period in question.

5. But it is pertinent to note that Section 238 of the Act postulates that "half

yearly tax shall be payable by the owner of the assessed property within 30 days of the commencement of each half year". Thus the assessee is granted a grace period of 30 days to pay the half yearly tax, from the date of its commencement. In other words, the assessee can be said to have committed default in payment of the tax only if he fails to remit the same within 30 days from the commencement of the half year period. If the statute itself has granted such a grace period of 30 days, it does not stand to reason why the same yardstick cannot be adopted in the matter of submission of application for remission of tax due to non-occupation.

6. A perusal of Sub-sections. (1) and (2) of Section 239 quoted above will show that such a view is possible. Sub-section (2) in particular provides that if the owner had already paid the tax in respect of a half year in which remission is due, "he shall be entitled to get either refund or shall be entitled to get the amount adjusted in the tax for the succeeding half year." Sub-section (1) and (2) obviously relate to a "post vacancy" situation. If the building had been vacant and unlet for a half year, the assessee can get refund of the tax even if he had paid the same in advance; or he can request for adjustment of the tax paid by him towards tax payable for the succeeding half year. Thus evidently the clauses in Section 238 and 239 of the Act sufficiently indicate some amount of flexibility. Therefore, a rigid or pedantic interpretation cannot be imported in the matter of notice or intimation to be furnished by the assessee to the Corporation with regard to non occupancy.

7. A situation may arise where a tenant of a building may vacate the same in the opening month of the half year period, abruptly and without prior notice to the owner/landlord. Similarly the owner/landlord may get vacant possession of a building in the course of the half year period either immediately after its commencement or shortly thereafter either through a court proceeding or otherwise. The building may remain vacant for the entire half year period till the owner/landlord finds a suitable occupier/tenant. The "previous notice" postulated in Clause 3(a) to Section 239, in my view, only means that the owner shall inform the authority concerned about the non-occupancy sufficiently early and before he makes a claim for remission of tax. However such notice must necessarily be within the grace period of 30 days provided for payment of tax u/s 238 of the Act.

8. It is true that unlike in the cases falling u/s 243 of the Act, remission of tax is not allowed on a pro-rata basis u/s 239, if the building in question falls vacant during the middle of a half year. Section 243 deals with remission of tax in respect of buildings situated in a particular area which is either included within or excluded from the limits of a Municipality in the middle of a half year.

Section 243 reads thus:

243. Remission of tax in areas included or excluded in the middle of a half-year.--

(1) Where any area is included within a municipal area the owner of every

building or land in such area shall -

(a) if the date of such inclusion falls within the last two months of a half-year, not be liable to pay property tax in respect for that half-year; and

(b) if such date falls within the first four months of a half-year, be entitled to a remission of so much tax not exceeding half of the property tax payable in respect thereof for that half-year, as is proportionate to the number of days in that half year preceding such date.

2) Where any area is excluded from a municipal area, the owner of every building or land in such area shall be entitled -

a) if the date of such exclusion falls within the first two months of a half-year, to a remission of the whole of the property tax payable in respect thereof for that half-year, and

b) if such date falls within the last four months of a half-year, to a remission of so much tax not exceeding a half of the property tax payable in respect thereof for that half year, as is proportionate to the number of days in that half-year succeeding such date.

3) No remission shall be granted under Sub-section (2) in respect of any building or land unless an application in writing for such remission is made to the Secretary within three months from the date of exclusion of the area in which the building or land is situated.

9. A perusal of the provisions contained in the above section shows that owners of buildings which are situated within the area of inclusion or exclusion, as the case may be, are entitled to get pro-rata remission in tax depending on the period left in the half year in question. Such a pro rata remission is not permitted u/s 239, obviously because such inclusion/exclusion being an official act, there may not be any difficulty for the Municipality/Corporation concerned, in issuing an appropriate general order of remission. But in cases falling u/s 239, the Municipality/Corporation, has to necessarily ensure that remission is granted to the individual assessee only in genuine or appropriate cases. It is probably therefore that it is provided in Clause (3) of Section 239 that the owner of the building or his agent has to "give previous notice" in order to get the benefit of remission. But the above stipulation cannot be interpreted to mean that the owner has to give notice prior to commencement of the half year period particularly in the absence of any such Clause or stipulation in Section 239.

10. In the case on hand, petitioner had submitted applications for the two half year periods in question on 5th and 9th of the first month of the half year period. That means in the first instance there was a delay of 4 days and in the other a delay of 8 days. The contention of the Corporation that the applications ought to have been submitted before the commencement of the half year period cannot to be accepted, particularly for the reason that the owner of a building is entitled to get a grace period of 30 days for payment of half yearly tax, by virtue of the

provisions contained in Section 238 of the Act. The prior notice stipulated in Section 239 has to be read and understood in consonance or harmony with the provisions contained in Section 238 of the Act. Therefore an application for remission of tax, if submitted within 30 days from the commencement of the relevant half year period, has to be treated as within time.

In the above facts and circumstances the Corporation was not justified in rejecting the application submitted by the petitioner on the ground of delay. Therefore Exts.P9 and P10 are quashed. The Corporation is directed to pass appropriate orders on those applications as though they were submitted within time.

Original Petition is disposed of in the above terms.