
(2003) 08 KL CK 0075
In the High Court Of Kerala
Case No : W.A. No. 2354 of 1998 A

K. Jameela

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Kerala Building Tax Act, 1975 — Section 2(e)

Citation : (2004) 1 ILR (Ker) 293 : (2004) 1 KLJ 299 : (2003) 3 KLT 979

Hon'ble Judges : K.A. Abdul Gafoor, J;J.M. James, J

Bench : Division Bench

Advocate : K.V. Sohan, for the Appellant; Sujith Mathew Jose (GP), for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The appellant has constructed a building after the enforcement of the Kerala Building Tax Act, 1975. The building has a plinth area of 259.08 M.Sq. This is not in dispute. According to the appellant, a part of the building is used for residential purpose and the remaining is used for commercial purpose. The assessing authority in Ext. P1 assessed the building for building tax as per the rate applicable to other buildings and not as a residential building. The appeal was dismissed by the Revenue Divisional Officer as per Ext. P2 stating that going by Government Circular No. 23474/93/TD dated 3.1.96, a building, a portion of which is used for residential purpose, it shall be treated as "other building" for the purpose of assessment of building tax. Accordingly the entire building was assessed at the rate applicable to other building. The main contention urged in this writ appeal is that, going by the definition of the word "building" and the "residential building", any part of the building which is used for such purpose shall also be considered as other building and as residential building". Therefore, as the appellant is using a part of the building in question for residential purpose, the area used for residential purpose shall be assessed at the rate specified for residential building and the remaining alone shall be assessed at the rate as applicable for other building.

2. This contention is resisted contending that the building as such cannot be termed as residential building, as part of it is used for commercial purpose. Therefore, it is not exclusively a residential building and will therefore be termed as other building as mentioned in the schedule for the purpose of assessment. The building is defined in section 2(e) of the Act. It reads as follows:

"Building" means a house, out-house, garage, or any other structure, or part thereof....

(Emphasis supplied)

The word "residential building" is defined in section 2(1) of the Act which reads as follows:

"residential building" means a building or any other structure or part thereof built exclusively for residential purpose....

(Emphasis supplied)

3. Therefore, a part of a building constructed exclusively for residential purpose will come within the definition of residential building. The respondents have no case that part is not constructed. When a part is so exclusively constructed and used for residential purpose, it will fall within the definition of residential building. Necessarily, that meaning shall be ascribed to the word "residential building" appearing in the schedule to the Act as well. Therefore, as that part of the building is exclusively constructed and used for residential purpose, the rate applicable under the head "residential building" in the schedule alone shall be paid. In other words, the rate for "other building" as contained in the schedule shall be applicable only to that part of the building which is used otherwise than for residence.

4. Hence, we are of the view that Ext. P2 is unsustainable. The statutory appellate authority deciding the matters exercising quasi judicial function cannot swallow the government circulars. They have to apply the circular giving its real meaning giving emphasis to statutory provisions. Accordingly, Ext. P2 is quashed and the matter is remitted back to the second respondent to hear and dispose of the appeal filed by the appellant afresh based on the finding as aforesaid.

Writ appeal is disposed of as above.