
(1985) 12 KL CK 0019

In the High Court Of Kerala

Case No : Original Petition No. 6616 of 1984

K. Thyagarajan

APPELLANT

Vs

Parur Municipality

RESPONDENT

Date of Decision : 09-12-1985

Acts Referred:

Kerala Municipalities (Taxation and Finance) Rules — Rule 24, 27

Citation : (1987) 1 ILR (Ker) 121

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : S. Ananthasubramonian and S. Shyam, for the Appellant; V.M. Kurian, for the Respondent

Judgement

V. Sivaraman Nair, J.—The late father of the petitioner was the owner of building No. 196 in Ward VI, Kannankulangara Ward of Parur Municipality. The father of the petitioner, Shri Krishna Iyer, died on September 14, 1979. Petitioner is the only son of his father. His mother is living with him at Alwaye. Petitioner submits that the building, which was occupied by the petitioner's parents in Parur had become vacant since his father's death. That building was assessed to property tax at the rate of Rs. 94.19 for every half year till the year 1980-81.

2. In the quinquennial revision for the period of 1981-85, the Municipal Commissioner proposed revision of the property tax at Rs. 579.60 per year, indicating the owner of the building to be the deceased, Shri Krishna Iyer. Petitioner filed exhibit P-1 objection dated October 9, 1980, informing the Commissioner about the death of his father. The petitioner had stated therein that the building was locked and unoccupied, that no further improvement justifying enhancement in the property tax had been made after the last assessment and that the annual value of the property might be fixed allowing 10% of depreciation per year. Exhibit P-2 dated March 6, 1981, was passed with reference to exhibit P-1 objections reducing the annual tax to Rs. 470''92. Curiously, the intimation was sent to Shri Krishna Iyer, who was no more even

prior to the proposed quinquennial revision and in relation to whose death intimation was given in exhibit P-1. Exhibit P-3 demand was sent, again addressed to Shri Krishna Iyer. Petitioner thereupon filed exhibit P-4 appeal, dated March 23, 1981, after remitting the enhanced tax for one and a half year. Petitioner and his mother, on whose behalf also exhibit P-4 appeal was filed, complained against the enhanced assessment of tax on the appurtenant land and the arbitrary fixation of the annual value of the property for the purpose of assessing building tax. Petitioner specifically requested in exhibit P-4 that he may be heard before the Council finally decides the matter. Objection was submitted by the petitioner on receipt of notices demanding building tax in respect of Door Nos. 210 and 211 belonging to the late father of the petitioner, Shri Krishna Iyer. Petitioner "objected to the assignment of two numbers to the same building and reminded the Commissioner of the appeal and also requested him that the assessment of tax was contrary to Section 100(1) of the Kerala Municipalities Act. Still later, he received exhibit P-6 order again in the name of his father intimating him that his appeal was rejected and, therefore, he should pay building tax and land tax for four half years amounting to Rs. 950.24.

3. Counsel for the petitioner submits that the assessment of building tax was arbitrary and the demand of land tax for the appurtenant area was unsustainable. Reference was made to Section 100 of the Municipalities Act, which provides that the building tax has to be fixed on the basis of reasonable annual letting value alone. Reference is also made to Section 5 of the Kerala Buildings (Lease and Rent Control) Act, which prescribes the upper limit as also the procedure for fixation of the fair rent. Petitioner submits that such fair rent shall be the standard rent for purposes of ascertaining the rental value of the building u/s 100 of the Kerala Municipalities Act. It is his further contention that exhibit P-2 order, exhibit P-3 demand and exhibit P-6 notice of rejection of appeal are contrary to rules 9, 10 and 12 to 14 of the Kerala Municipalities (Taxation and Finance) Rules. Reliance was placed on the decisions of the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and *Syed Asadullah Kazmi Vs. Additional District Judge, Allahabad and others*, , and of this court in *George v. Muvattupuzha Municipality* [1975] KLT 380, *Nataraja Gowder v. Municipal Council* [1976] KLT 351 and *Kunju v. Executive Officer* [1984] KLT 466.

4. In the counter-affidavit filed by the respondent, it is stated that the petitioner had suppressed material facts relating to the letting of the building to two persons from whom about Rs. 325 per month was received as rent by the petitioner. It is, therefore, submitted that the petitioner cannot be given any relief by this court. The assertion that the building is unoccupied and, therefore, the standard rent should be ascertained for fixation of building tax u/s 100 of the Municipalities Act is totally refuted. Reliance was placed on exhibit R-1 letter obtained from one of the tenants alleged to have been occupying the building during 1980-81 to make out the allegation that the petitioner had suppressed material facts. It is the respondent's case that assessment of property tax and

building tax were fully justified on the materials available to the Commissioner and the Appellate Authority ; and that there is no justification for interference with the same.

5. u/s 100 of the Kerala Municipalities Act, the method of assessment of property tax prescribed by law is that " every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a person different from the owner of such site or premises". Sub-section (2) provides:

" The annual value of buildings and lands which are occupied by, or adjacent and appurtenant to, buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction in the case of buildings of fifty per cent, of that portion of such annual rent which is attributable to the buildings alone apart from their sites and the adjacent lands occupied as an appurtenance thereto."

6. It is evident from Section 100 that separate assessment for land, site of the building and adjacent premises occupied and appurtenant thereto can be made only if the owner of the building is a person different from the owner of the land or premises. In the present case, the owner of the building and the site is one and the same person. Separate assessment on the appurtenant land does not, therefore, seem to be justified.

7. The next question relates to the annual value of the building and lands. That has to be fixed on the basis of " gross annual rent at which they may reasonably be expected to let ". This expression had come up for consideration in the decision in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and *George v. Muvattupmha Municipality* [1975] KLT 380. In the former, the Supreme Court observed (at page 703):

" The criterion is the rent realisable by the landlord and not the value of the holding in the hands of the tenant. The rent which the landlord might realise if the building were let is made the basis for fixing the annual value of the building..... What the landlord might reasonably expect to get from a hypothetical tenant, if the building were let from year to year, affords the statutory yardstick for determining the annual value..... There would ordinarily be in a free market, close approximation between the actual rent received by the landlord and the rent which he might reasonably expect to receive from a hypothetical tenant."

8. The same question was considered in *Nataraja Gowder v. Municipal Council* [1976] KLT 251. On a consideration of the authorities that far, it was held:

" The criterion is the rent realised by the landlord and not the value of the holding in the hands of the tenant. The value of the property to the owner is the standard in making the assessment. It is only the rental value of the building to the owner that is material. That value would be what the owner might receive

from the tenant or the owner could expect to receive by invoking the provisions of statutes enabling him to seek fair rent where what is being received is less than fair rent."

9. Particular emphasis was laid on the " provisions of statutes enabling him to seek fair rent where what is being received is less than fair rent".

10. If the building was not occupied, it would have been necessary for the respondent to fix the actual value of the building and land by ascertaining the gross annual rent which the landlord may reasonably be expected to realise from a hypothetical tenant. The question whether the building was actually occupied or not was, therefore, a very material consideration in effecting the assessment and disposal of the appeal. Respondent has no case that the result of the investigations conducted by them relating to the actual occupation of the building were at any time put to the petitioner before the appeal was heard and disposed of. Nor did the respondent have a case that exhibit R-1(a) was ever disclosed to the petitioner.

11. This takes us to the question of the manner in which the appeal impugning the assessment of the building tax has to be disposed of, Balakrishna Menon J., in the decision in Kunju v. Executive Officer [1984] KLT 466, held that in determining the annual value of a building and in disposing of a revision against a proposed refixation of tax, the Executive Officer of the Panchayat functioning under the Panchayat Act and Rules is exercising a quasi-judicial function. The wording of the rules is almost identical. Quantification of the tax due necessarily involves a proposal, an opposition and a final determination. Necessarily, therefore, that process cannot but be quasi-judicial. A person who is taxed is entitled to know the reason why and on what basis he was assessed. The assessing authority is, therefore, obliged to advert to the objections in the nature of exhibit P-1 and give an order containing reasons why the objections were rejected. Exhibit P-2 order does not contain any such reason at all.

12. There can be no dispute that exercise of appellate power is quasi-judicial : nor can there be any doubt that an appeal under Rule 24 of the Taxation and Finance Rules has to be disposed of after hearing the appellant. In fact, rule 27 of the above rules stipulates that-

" no appeal to the council shall be heard-

(a) unless it be presented at the municipal office-

(i) within fifteen days from the service of the notice referred to in Section 122, or

(ii) within fifteen days from the date upon which the tax becomes payable u/s 104 or under Rule 18."

13. It may, perhaps, be that it is not obligatory that a personal hearing shall be given to appellants in all appeals. But, in the present case, it is not necessary for me to decide the general question, because, admittedly, the appellant had

requested for an opportunity of being heard in his appeal. No such opportunity was given. According to the counter-affidavit, there were materials in the possession of the respondent, on the basis of which a decision adverse to the petitioner was come to in the appeal filed by him. It is all the more obligatory that such materials were disclosed to the appellant and a decision was taken after giving him an opportunity of being heard with reference to such materials. As already noticed, the respondent had not given any such opportunity to the petitioner.

14. It seems to me curious that in spite of the intimation contained in exhibit P-1 that the father of the petitioner was no more and the request that the municipal records might be altered to show his name as the owner of the building, the respondent continued to issue orders, notices, etc., in the name of the original owner of the building who was no more alive. Evidently, there was no advertence to exhibit P-1 objections or exhibit P-4 appeal memorandum when the original and appellate authorities acted in dealing with and disposing of the objections and the appeal. This also renders the entire proceedings illegal and unsustainable. The only course open to me, in these circumstances, is to direct the appellate authority to reconsider exhibit P-4 appeal with notice to the petitioner and after disclosing such materials as are proposed to be used against him sufficiently in advance. The appellate authority shall consider the annual rental value of the building in accordance with Section 100 of the Kerala Municipalities Act. In ascertaining the actual value, it will consider the effect of the decisions of the Supreme Court in *Dewan Daulat Rai Kapoor and Others Vs. New Delhi Municipal Committee and Others*, and *Syed Asadullah Kazmi Vs. Additional District Judge, Allahabad and others*, , and of this court in *George v. Muvattupuzha Municipality* [1975] KLT 380. It will not be open to the respondent to rely on any material not disclosed to the petitioner in dealing with and disposing of the appeal.

15. The original petition is disposed of as above. There will be no order as to costs.