

(1989) 05 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 8095 of 1987 L

K.K. Karunakaran

APPELLANT

Vs

Tahsildar and Others

RESPONDENT

Date of Decision : 22-05-1989

Acts Referred:

Constitution of India, 1950 — Article 265
Kerala Building Tax Act, 1975 — Section 13, 14

Citation : (1989) 05 KL CK 0012

Hon'ble Judges : K. Sukumaran, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, for the Appellant; L.G. Poti, Government Pleader, for the Respondent

Judgement

Sukumaran, J.—The owner of a building assessed to tax under the Kerala Building Tax Act, 1975, is the writ Petitioner. The building constructed by him in 1982 was subjected to tax under Ext. P-1 in the sum of Rs. 76,620. The capital value of the building was fixed at Rs. 10,28,700. Ext. P-1 is the notice of demand. The particulars like the location of the building, the capital value and the tax assessed are given in the schedule. An appeal Ext. P-2 was filed before the Appellate Authority, Revenue Divisional Officer. That was dismissed by order Ext. P-4, dated 9th March 1987. The revision Ext. P-5 filed on 30th December 1986 was dismissed under Ext. P-6 on 6th May 1987.

2. The Petitioner tenaciously pursued his grievance by filing Anr. revision petition Ext. P-7 before the Government. The Government took the view that such a revision was not maintainable. The decision was communicated to the Petitioner by Ext. P-8, dated 22nd September 1987.

3. The Petitioner challenges Ext. P-8 on the ground that the abdication of jurisdiction of the Government was unjustified under the statutory scheme. In the alternative, an attack is made on the orders passed by the taxing authorities, the Tahsildar, the Revenue Divisional Officer and the Collector. There has not

been any proper consideration at all of the contentions of the Assessee and the materials relevant for the assessment is the substantial contention of the Petitioner on that aspect.

4. It is desirable that the statutory provision Section 14 of the Act is read before proceeding with the consideration of the first contention. That Section reads:

Power of revision of the Government. - The Government may, on application by any person aggrieved, call for and examine the record of any order passed by the District Collector suo motu u/s 13, for the purpose of satisfying themselves as to the propriety or regularity of such order and pass such order in reference thereto as they think fit:

Provided that the Government shall not revise any order under this section after the expiry of sixty days from the date on which that order was communicated to the applicant:

Provided further that an order to the prejudice of any person shall not be passed under this section unless that person has been given a reasonable opportunity to show cause against such order.

The section has to be read in the background of the immediately preceding section, Section 13. The substantial portion of that section also may be extracted:

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

(The three provisos carve out areas from the generality of the substantial provision. The other sub-sections impose other restrictions in the exercise of the revisional power).

5. A reading of the two sections together would reveal the following: The revision petitions coming before the Revisional Authority u/s 13 fall under two types. One is the ordinary and general type, a revision filed by an aggrieved Assessee against the appellate order. The other is a suo motu revision effected by the Collector. If the Collector feels that there is a gross under assessment or such other factors warranting a re-examination of the appellate order, he can invoke the suo motu power of revision. It is the general experience that a busy Collector very rarely exercises such a power of suo motu revision. The time limit of three months, makes it virtually impossible to exercise that power, having regard to the slow pace with which the State machinery moves. With that aspect of the matter the court is not concerned.

6. Section 14 does not deal with both the types of revisional exercises referred to in Section 13. That section is confined to the consideration of an application by the person aggrieved, and as regards an order passed by the Revisional Authority suo motu u/s 13. In other words, the revisional power of the

Government is confined to the orders of the Revisional Authority passed by him suo motu. If an order has been passed by the District Collector as a Revisional Authority, and against an appellate order passed by the Revenue Divisional Officer in exercise of his appellate powers, there is no further statutory remedy by way of revision to the Government. An Assessee has one more door to knock at, if the Revisional Authority exercises a suo motu power on revision and passes an order prejudicial to the Assessee. If the Assessee has already knocked at the doors of the Appellate Authority and of the Revisional Authority, the Collector, a third door is unavailable to him.

7. The view taken by the Government in Ext. P-8 is in accord with the above conclusion. The conclusion is justified by the language of the section and an over view of the mosaic of the statutory scheme. There is no error in the order. The contention is therefore to be repelled. I do so.

8. There is substance in the second contention. Ext. P-1 does not contain any enumeration of the materials and data or a discussion thereof and the reasoning behind the conclusion as regards the capital value of the building. The appellate order was also very cryptic. The Assessee is still kept in the dark, about the basic facts on which the computation of the capital value of the building has been arrived at. The revisional order of the Collector is more detailed. There is a resume of the anterior exercises by the assessing authority and the Appellate Authority. The Revisional Authority was satisfied that the valuation of the Income Tax authorities was considerably lower than that made by the authorities under the Building Tax Act. However, according to the Revisional Authority, that fact did not deprive the authority under the Building Tax Act of a power of computation of the capital value, on the basis of materials available before him and in accordance with the principle or practice adopted by him. The Revisional Authority observed:

A perusal of the Taluk record shows that before assessing the building, the Revenue Inspector, Mattancherry had inspected the building and discussed at length the various persons who are occupying the building, the total plinth area of the building, the electric and sanitary fittings and all other related particulars. It is on this basis that the Tahsildar has issued the assessment order. The Tahsildar has resorted to the P.W.D. rates while computing the building tax payable by the revision Petitioner.

As the Tahsildar has conformed all the formalities required under the Building Tax Act and Rules for assessing the revision Petitioner's property, I do not see any reason to interfere with the order of the lower authority.

9. Counsel for the Petitioner submitted that none of those relevant particulars which are contained in the file of the authorities had been disclosed to him. It is complained that this non-disclosure of the materials and the working pattern in the computation of the capital value, vitiates the order even on a fundamental basis. In relation to the facts of the present case, there is substance in that

contention. If at some anterior stage, there had been a full and fair disclosure to the Assessee of the materials on the basis of which the computation had been made, there may not be any basis for such a complaint viewed from the practical angle. If for example, the Appellate Authority had indicated all the relevant materials on which the capital value was computed and the tax assessed, a grievance in the form of a negation of the principles of natural justice arising out of a non-disclosure of the materials, may be unsubstantial. At least before the Revisional Authority, the Assessee gets an opportunity to expose the errors in relation to unjustified assumptions and to elucidate matters which require explanation or expatiation. If and when a disclosure eludes the Assessee before all the three authorities, the grievance assumes a different dimension and strength. In such a situation, it has got an over-powering effect in relation to all the orders passed by the authorities under the Act.

10. Under the legal and constitutional system, any authority discharging powers under law is bound to project the reasons which weigh with him in coming to a particular conclusion. Denning Lord Justice declared:

The giving of reasons is one of the fundamentals of good administration.

See *Breen v. Amalgamated Engineering Union* (1971) 1 All E.R. 1148. The Supreme Court of India has declared the principle consistently. It is unnecessary to load the judgment with numerous citations containing the declaration and application of the principle. The recent decision of the House of Lords, *Dr. G. v. General Medical Council* (1989) 2 All E.R. 69, is a recent illustration of the application of the principle, and the extreme anxiety on the part of the courts to ensure that a citizen is not handicapped even by a misapprehension in relation to the allegations or assumptions made against him by a statutory functionary. The principle is attracted in all situations where there is an impact on a citizen's rights—Whether it be an adjudication in relation to an industrial dispute, a determination of a service claim, or a pronouncement on any other legal right. The mere fact that certain exercises had been made in the files kept in the office would be no consolation for the affected person. On the one hand, a citizen is certainly bound to discharge his liability cast under a valid assessment order. However, he must know the details on which an assessment has been made and the liability imposed. An assessment without the authority of law is unconstitutional. Article 265 of the Constitution explicitly declares it to be so. An illegal impost will even constitute a violation of the Fundamental Rights of the citizen. The absence of reasons in Exts. P-1, P-4 and P-6 will have to be viewed from this larger perspective of legal requirement and constitutional functioning.

11. The Act in question, for reasons not easily understandable, has provided for only a notice of demand. Some components of an assessment exercise are incorporated in its rigid frame and form. Many of the essentials of a proper assessment exercise are conspicuous by their absence in that notice. It is for the State Government to consider whether the rule and form should not be amended so as to provide explicitly and expressly for a detailed assessment order. The tax

in question cannot be equated to a simple or light one as in the case of land tax or a plantation tax. In those enactments a singular detail, the extent of the land or plantation may be sufficient for an automatic and arithmetic calculation of the tax liability. In the generality of cases on assessment under the Act, the tax liability could be substantial and sizable. The assessment would naturally involve consideration of very many aspects which go into the computation of the capital value. It can be as complicated as the determination by a civil court as regards the land acquisition compensation. It can even be more. Alike for the citizen and the State, a detailed assessment order would be highly helpful. It may protect the owner of the building from an arbitrary and harassing assessment. It will enable the State to detect quickly whether, for a collateral reason, there has been a gross under assessment at the level of the assessing authority. The State may if so advised consider such matters and act appropriately. The court need consider a contention regarding Constitutional infirmity in relation to the basic assessment exercise, only if and when the question is raised before it.

12. In the light of the discussion of the factual details of the case, it has to be held that the Assessee had been all through kept in the dark relating to the material particulars which were reckoned for the computation of the value of the building. That is impermissible under law.

13. In that view of the matter, the orders Exts. P-1, P-4 and P-6 are liable to be quashed. I would, however, restrict the invalidation action to Ext. P-6 for reasons indicated below.

14. About 8 years have elapsed after the completion of the construction of the building. The State is therefore entitled to have the legitimate tax due from the Petitioner, without any further delay. The materials have been already collected and are available in the files. In these circumstances, it is unnecessary to direct a de novo assessment proceedings even from the stage of the assessing authority. Interests of justice will be sufficiently satisfied if the Revisional Authority disposes of the revision afresh. It would be open to the Petitioner to seek information of all relevant data and materials, either by making an application for certified copy of the relevant documents or by seeking permission to peruse the files. The Petitioner is given opportunity to make his submissions, legal and factual, if he feels so advised, after obtaining the additional information as indicated above. The Revisional Authority will, no doubt, give the Assessee a fresh hearing.

15. The writ petition is disposed of with the above direction. There will be no order as to costs.