

(1984) 12 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 1393 of 1984

K.O. Kunju

APPELLANT

Vs

Executive Officer, Thrikkakara Panchayat and Another

RESPONDENT

Date of Decision : 03-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) KLJ 470

Hon'ble Judges : P.C. Balakrishna Menon, J

Bench : Single Bench

Advocate : P. Santhalingam and K.J. Eranimose, for the Appellant; M.M. Cheriyan, Asok M. Cheriyan, Poly Mathai, Mathews Valsalan, K.K. Raj and Thomas Xavier, for the Respondent

Final Decision : Allowed

Judgement

P.C. Balakrishna Menon, J.—The petitioner owns 4 shop buildings Nos. 3/81 to 3/84 within the Thrikkakkara Panchayat area. These buildings were taxed by the Panchayat on the basis of their annual value and the annual tax for each of these buildings was fixed at Rs. 16.20. Ext. P1 receipt dated 30-9-1982 produced in this case shows that the annual building tax of these 4 buildings was Rs. 16.20 each till 1982. Ext. R1 (a) dated 20-6-1983 filled along with the counter affidavit of the respondent, the Executive Officer of the Panchayat is a public notice for revision of building tax of all buildings in the Panchayats area for the period from 1-4-1983 to 31-3-1988. The notice shows that the building tax for the 5 years aforesaid had been fixed and published on the notice board of the Panchayat, and it is open to those who object to file revision petitions before the Executive Officer with Re 1/- court fee stamp within 30 days of the date of the notice. The petitioner submitted his objection, a copy of which is produced as Ext. R1 (b) wherein it is stated that the enhancement of tax from Rs. 16.20 to Rs. 64.30 for each of his shop buildings is arbitrary and he has no means to pay tax at such exorbitant rates. It is also stated that out of the 4 shop rooms, one is in his

occupation, for the purpose of his trade, the other three rooms are lying vacant and he is prepared to pay tax on the basis of the rent at which the buildings can be let. The Executive Officer in his counter affidavit states that he had issued Ext. R1(c) notice dated 8-8-1983 to the petitioner informing him that his revision will be heard on 30-9-1983. He was heard on that day and final order was passed by the Executive Officer, a copy of which is produced as Ext. R1(d). Ext. R1(d) does not show the date on which the order is passed. It refers to the revision petition filed by the petitioner on 22-7-1983. This order appears to have been served by affixture at the petitioner's premises.

2. Section 68(1) of the Kerala Panchayats Act 1960 (hereinafter referred to as the Act) is extracted below:--

68. "Building tax (i)--Every Panchayat shall in accordance with the rules pre-he purpose levy a tax on all buildings (other than huts, and buildings exempted by the provisions of this Act) in the Panchayat area, at such percentage of the net annual rental value of the buildings as may be fixed by the Panchayat by resolution, subject to a maximum of ten percent and a minimum of six percent.

Sub Section (4) of Section 68 empowers the Government to make rules providing for-

(i). the manner of ascertaining the net annual rental value of buildings or the categories into which they fall for the purpose of taxation;

(ii). the person who shall be liable to pay tax and the giving of notices of transfer of buildings;

(iii). the grant of exemption from tax on the ground of poverty;

(iv). the grant of vacancy and other remissions; and

(v). the circumstances in which and the conditions subject to which buildings constructed, reconstructed or demolished or situated in areas included in, or excluded from, the Panchayat area during any half year, shall be liable or cease to be liable to the whole or any portion of the tax.

3. Rule 4 of the Kerala Panchayats (Building Tax) Rules 1963 (hereinafter referred to as the Rules) provides for determination of annual rental value. The net annual rental value of buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year, less a deduction of ten percent of such annual rent in lieu of all allowances for repairs or on any other account whatever. As per rule 5 the Executive Authority may for the purpose of assessing building tax, by notice, call upon the owner or occupier of any building to furnish him within thirty days after the service of the notice with returns of the rent payable for the building, the cost of erecting the building, measurements of the land and such other information as the Executive Authority may require; and every owner and occupier on whom such notice is served shall be bound to comply with it and

make a true return to the best of his knowledge or belief. Rule 6 provides that the tax payable yearly is to be determined once in every five years by the Executive Authority and payments are to be made by the owner in two half yearly instalments. When assessment books have been prepared for the first time and whenever general revision of such books has been completed, the Executive Authority shall give public notice under rule 7 stating that revision petitions will be considered by him if they reach the Panchayat Office within a period of thirty days from the date of such notice. Sub Rule (2) of Rule 9 enjoins the Executive Authority to afford a reasonable opportunity to the objector to appear either in person or by authorised agent and to represent his case and Rule (ii) requires the Executive Authority to serve a bill on the assessee showing (i) the amount of tax due for each year till the next general revision under Rule 6 in respect of each building; (ii) the last date for the payment of tax for each half year; and (iii) the liability in default of payment of tax.

4. Section 144 of the Act provides for appeals and revision. An appeal from any notice or order issued or other action taken by the executive authority under the provisions of the Act or the rules framed thereunder shall, in the first instance, lie to the Panchayat, and there is a right of further appeal to the Deputy Director. A revisional power against the orders of the Deputy Director is vested in the Government under Sub-Section 3. From these provisions of the Act and Rules adverted to above it is seen that the first respondent--Executive Officer was exercising a quasi judicial function in determining the annual value of the buildings, and in disposing of the revision filed by the petitioner under Rule 7 of the Kerala Building Tax Rules. It is true that the revision itself was filed beyond 30 days after the date of issue of the public notice. But Ext. R1 (d) would show that the Executive Officer did not reject the revision for the reason of delay in submitting the same. He entertained the revision and passed final orders without giving any reason for the enhancement of tax on the petitioner's buildings four fold. Even in the absence of a revision by the assessee, the assessment should be reasonable and objective based on relevant materials, and should not be arbitrary or capricious. In *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, it is stated at page 1789:

It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with *H.M. Desai v. Testeels Ltd.*, C.A. No. 245 of 1970 decided on 17-12-1975.

It is further stated in the same page:

If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support

of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law.

6. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, it is stated at page 859:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, :

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.

7. For the aforesaid reasons Ext. R1 (d) order of the first respondent-- Executive Officer, and the bill Ext. P3 issued on that basis cannot be sustained in law. The order in question is an appealable order and it is the bounden duty of the assessing authority to give reasons why a four fold enhancement as made in the assessment of building tax on the petitioner's buildings. There is also nothing on record to indicate as what basis the annual value was fixed. Even the counter affidavit filed by the respondent does not disclose the basis on which the annual value is fixed for the enhancement of building tax from Rs. 16.20 to Rs. 64.80 for each of the four buildings, nor does it show the prior annual value or the annual value on the date of revision. The decision by a quasi judicial authority without giving any reason in support of the same is one in violation of the principles of natural justice. The contention urged by the Learned Counsel for the respondent that for the reason of an alternative remedy of appeal this Court will not exercise its discretion under Article 226 of the Constitution in favour of the petitioner cannot be accepted as it is well settled that an alternative remedy is not a bar against the issue of a writ to quash an order passed in violation of the principles of natural justice. The result is I quash Ext. R1(d) order of the respondent-- Executive Officer and the bill Ext. P3 issued on that basis. This does not preclude

the respondent from determining the annual value and the tax due thereon afresh and in accordance with law.

The Original Petition is allowed with costs.