
(1970) 07 KL CK 0001

In the High Court Of Kerala

Case No : O.P. No"s. 4499, 4500, 4533, 4644 of 1968 and O.P. 1971 of 1969

K.V. Subhadra Kovilamma

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 14-07-1970

Acts Referred:

Constitution of India, 1950 — Article 276

Citation : (1970) KLJ 741

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Advocate : M.C. Sen in O.P. Nos. 4499, 4500 and 4533 of 68 and K.V. Suryanarayana Iyer in O.P. No. 4644 of 1968 and O.P. 1971 of 1969, for the Appellant; K.P.G. Menon, for the Respondent

Judgement

M.U. Isaac, J.—These five writ petitions raise a common question. They have, therefore, been heard together, and are being disposed of by this single judgment. The Corporation of Calicut issued notices to the petitioners in all these cases u/s 137 of the Kerala Municipal Corporations Act, 1961 (hereinafter referred to as the Act), assessing them to profession tax u/s 113 in respect of income received by them by way of rent from buildings situate within the limits of the Corporation. The petitioners contend that the said assessments are illegal and without any authority of law. The only provision in the Act which empowers the Municipal Corporation to levy professional tax is Section 113. Sub-section (1) alone is relevant; and it reads.

113. Tax on professions, arts, callings, business and appointments:-- (1) If the council by a resolution determines that a profession tax shall be levied, every company which after the date specified in the notice published u/s 100 transacts business in the city for not less than sixty days in the aggregate in any half-year; and every person who after the said date in any half-year,--

(a) exercises a profession, art or calling or transacts business or holds any appointment public or private:

- (i) within the city for not less than sixty days in the aggregate, or
- (ii) outside the city but who resides in the city for not less than sixty days in the aggregate; or
- (b) resides in the city for not less than sixty days in the aggregate and is in receipt of any pension or income from investments.

shall pay in addition to any licence fee that may be leviable under this Act, a half-yearly tax assessed, in accordance with the rules in Schedule 11, but in no case exceeding the limit prescribed under article 276 of the Constitution of India. (The explanations are omitted)

The learned counsel for the Corporation submitted that the impugned levy would fall under clause (a) of Section 113(1). According to him, investing money for acquisition of lands and buildings & receipt of rent therefrom in a regular manner by letting out the buildings is a calling within the meaning of clause (a) in Sub-section (1). He referred me to a Division Bench decision of this Court in *Velu v. The Executive Officer, Erumayur Panchayat* 1967 K.L.J. 443. The question in that case was whether agriculture is a calling within the meaning of Section 69 of the Kerala Panchayat Act. The Court held that the word "calling" is a word of very wide import, it means one's usual occupation, vocation, business or trade, and that the pursuit of agriculture is exercise of a calling. This decision does not render any support to his argument. Reference has also been made to the decision of the Supreme Court in *P. Krishna Menon Vs. The Commissioner of Income Tax, Mysore, Travancore-Cochin and Coorg, Bangalore*, . In that case, it was contended that teaching was not a vocation within the meaning of Section 10 of the Indian Income tax Act, 1922. The contention was summarily rejected. I do not find anything in this decision also to support the counsel's argument. However wide the amplitude of the expression "calling" used in clause (a) to Section 113(1) of the Act may be, I am clear in my mind that it cannot include investment of money on buildings and receipt of income by way of rent therefrom. In fact, income from investments is specifically mentioned in clause (b) of Section 113(1); and the impugned assessments would clearly fall under the said clause. But this clause has been rightly attacked by the petitioners as unconstitutional, on the ground that the said provision is beyond the competence of State Legislature. It is item 60 in List II of the VII Schedule of the Constitution which empowers the State Legislature to make law to levy profession tax. It reads,--

Taxes on professions, trades, calling and employment.

The learned counsel for the Municipal Corporation has conceded that there is no item in the State or Concurrent List empowering the State Legislature to levy a tax on income from investments. The Supreme Court had occasion to consider the validity of an identically similar provision, namely clause (b) of Section 111 (1) of the Madras City Municipal Act in *C. Rajagopalachari Vs. Corporation of Madras*, and it held that the said provision is invalid. In that case, profession tax

was sought to be levied on receipt of pension. The court pointed out that the tax on receipt of pension or income from investments is, in truth and substance, a tax on income, and that it cannot be levied by the State unless it falls under and is saved by Article 276 of the Constitution. This article relates only to taxes on professions, trades, callings or employment; and tax on income from investments does not fall within its ambit.

2. In the result, I hold that Municipal Corporations have no power u/s 113 of the Act to levy tax on income received by a person by way of rent from buildings. The notices issued by the Calicut Corporation in these cases to levy such a tax are, therefore, quashed. In the circumstances of the case, there will be no order as to costs.