(1965) 08 KL CK 0019

In the High Court Of Kerala

Case No : O.P. 2208 of 1964

L.R.S.K. Ramaraj APPELLANT

Vs

Vandanmedu Panchayat and Others RESPONDENT

Date of Decision : 12-08-1965

Acts Referred:

Kerala Panchayat (Building Taxes) Rules 1963 — Rule 11
Kerala Panchayat Raj Act, 1994 — Section 68

Citation : (1965) KLJ 1083

Hon'ble Judges : V.P. Gopalan Nambiyar, J

Bench : Single Bench

Advocate : K. George Varghese Kannanthanam and Thomas V. Jacob, for the Appellant; K. Velayudhan Nair, K.J. Joseph, M.C. Sen for Respondents 1 and 2 and Govt. Pleader. for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

V.P. Gopalan Nambiyar, J.—This writ petition seeks to quash Ext. P.I being the demand bill and assessment to Building Tax on the petitioner under the provisions of the Kerala Panchayats Act 32 of 1960, and the Buildings Tax Rules of 1963 framed under the provisions of the said Act. Arguments in support of this petition covered a very wide range, the petitioner''s counsel canvassing the, constitutional validity of the levy of the Tax itself on several grounds which it is unnecessary to specify. It seems to me that this O.P. can be disposed of on a very short ground.

2. There is no dispute that this is the first assessment of the petitioner to Building Tax. Rule 6 of the Kerala Panchayats (Building Tax) Rules, 1963 runs as follows:

6. The tax payable yearly to be determined once in every five years by the Executive Authority and the payment to be made by the owner in two half-yearly instalments. (1) The building tax shall be assessed and the yearly tax determined, once in every five years and shall be payable by the owner of the

assessed building in two equal half-yearly instalments within thirty days of the commencement of each half year.

(2) The value of any building for the purpose of building tax shall be determined by the Executive Authority:

Provided that the value of any'' building the tax for which is payable by the Executive Authority shall be determined by the Panchayat.

(3) The Executive Authority shall enter the annual or capital value o all buildings determined by him and the tax payable therein in assessment books to be kept for the purpose at the Panchayat Office. Such books shall record the following particulars in so far as they can be ascertained with regard to each assessable item: --

(a) the name of the owner;

(b) the name of the Occupier;

(c) the designation, if any of the owner and occupier;

(d) the name of the ward and street, if any in which it is situated and any survey or other number which it bears;

(e) the annual or capital value, as the case may be; and

(f) the amount of tax payable.

3. In pursuance of this Rule, it is admitted that assessment books have been prepared and kept in the office of the respondent Panchayat. Rules 7 & 8 of the above rules are as follows:

7. Public notice to be given of assessment. 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 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. The notice shall be affixed to the notice board of the Panchayat Office and be published in the Panchayat area by beat of drum and by advertisement in at least one daily newspaper published in the Chief regional language having wide circulation in the Panchayat area.

8. Special individual notices to be given for assessments and revision between two general revisions--In every case in which, between one general revision and another, the Executive Authority assesses any building for the first time or increases the assessment on any building for otherwise than in consequence of a general enhancement of the rate at which the building tax is leviable, the Executive Authority shall intimate by a special notice to the assessee of such building that a petition for revising the assessment will be considered if it reaches the Panchayat Office within 30 days from the date of service of such notice.

4. In pursuance of the above Rules, the required public notice was issued by the respondent Panchayat on 10--3--1964 and a copy of the same has been produced as Ext. R3.

5. Rule 9 (2) provides that revisions preferred under Rules 7, 8 & 9 (i) shall be disposed of after affording a reasonable opportunity to the party. Rules 10 & 11 of the above Rules run as follows;--

10. Petitioner to be informed of decision and correction of assessment books.-- Immediately after the disposal of a revision petition, the Executive Authority shall inform the petitioner or his authorised agent in writing of the orders passed thereon, and shall if necessary cause the assessment books to be corrected and shall serve on him a bill in accordance with Rule II. The changes and alterations in assessment shall also be noted in the concerned Demand Register."

"11. Each assessee to be served with a bill -- After the revision of the assessments in accordance with Rules 6 and 9 has been completed, the Executive Authority shall serve on each assessee a bill 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.

6. Ext. P. 1 which is the demand bill served on the petitioner under the provisions of Section 68 of the Kerala Panchayats Act and Rule 11 of the Kerala Panchayats (Building Taxes) Rules 1963 is dated 23--3--1964. It seems to me from a reading of Rule 11 and the other rules quoted supra that a bill can be served on the petitioner only after the revision of the assessment in accordance with Rules 6 and 9 has been completed.

7. It seems clear that the revision of the assessment in accordance with Rules 6 and 9 has not been completed. Rule 6 (1) speaks about assessment of Buildings Tax and determination of yearly tax once in every five years. Rule 6(5) refers to amendment of assessment books at any time between one general revision and another. On the terms of the rule, it seems inappropriate to apply the term "revision" to the first assessment of building tax and determination of yearly tax contemplated by Rule 6 (1). Rules 7, 8 and 9 provide in terms for revision and Rule 10 enacts that immediately after the disposal of a revision petition the Executive Authority shall correct the assessment books and serve on the assessee a Bill in accordance with Rule 11. Rule 11 is further clear that the Bill contemplated by it can be issued only after the revision in accordance with Rules 6 and 9. Whatever may be the position in regard to the quinquennial revision under Rule 6, in relation to the first assessment, the revision contemplated by Rule 11, seems to be what is really provided by Rules 7, 8 and 9 (2), and before the revision is complete the issuance of a Bill under Rule 11 seems unjustified.

8. Under Rules 7 and 8, the petitioner and persons similarly placed have a right of applying for revision within 30 days from the date of the notices. In so far as Ext. P. 1 has been issued before the time limit of 30 days for revision contemplated under the Rules expired, it is unsustainable, and, on that one ground, is liable to be quashed. I do so.

9. In this view, it is unnecessary to deal with the various contentions urged by the petitioner''s counsel regarding the constitutionality of the levy of buildings Tax under the Kerala Panchayats Act 32 of 1960. The O.P. is allowed as above. There will be no order as to costs. Nothing contained herein will preclude the respondent Panchayat from assessing, the petitioner in accordance with law.