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(2014) 11 KL CK 0164

In the High Court Of Kerala

Case No : WP (C). No. 26168 of 2010 (U)

M. Narayanan APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 14, 2(e), 5A

Citation : (2014) 11 KL CK 0164

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : M.P. Ramnath and P. Rajesh (Kottakkal), Advocate for the Appellant; Bobby John Pulickaparambil, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioners are husband and wife. The 1st petitioner owned 9.50 Ares of land in Sy. No. 139/11 and 139/12 of Kottakkal village. On the said land he began construction of a building. The construction was begun at a time when the building rules were not applicable in the Panchayat. When the construction of the building reached a stage where the ground floor was nearing completion, the 1st petitioner by Ext. P1 sale deed conveyed the right to construct the 1st floor of the building to his wife, the 2nd petitioner herein along with the undivided share in the land to an extent of 1.89 Ares. It is stated that, thereafter, the 2nd petitioner continued with the construction of the 1st floor of the building and completed construction by the year 2004. It is the case of the petitioner that the ground floor and the 1st floor were separately assessed for the purposes of property tax due to the local authority as also for the purposes of the Building And Other Construction Workers Welfare Fund Cess Act. It is also submitted that the ground floor and the 1st floor were allotted separate door numbers by the Kottakkal Grama Panchayat. The building tax assessment of the building, however, was completed by treating the entire building as a single unit and, on finding that the total plinth area of the ground floor and the 1st floor exceeded the limit shown in Section 5A of the Kerala Building Tax Act (278.7 sq.metres), the building was subjected to the levy of luxury tax as well. Ext. P9 is the assessment order passed in this regard by the 4th respondent. The petitioner preferred an appeal against Ext. P9 assessment order before the 3rd respondent. The said appeal was however dismissed by Ext. P13 order on the ground that, while preferring the appeal, the petitioners had not paid the luxury tax that was assessed on the building. Aggrieved by Ext. P13 order, therefore, the petitioner preferred a further revision before the 2nd respondent. The 2nd respondent, by Ext. P15 order, dismissed the revision petition preferred by the petitioners on merits. In Ext. P15, it is found that the ground floor and the first floor of the building although, under the separate ownership of the 1st and 2nd petitioners, was connected by a stair case which ran from the living room on the ground floor to the 1st floor. The 2nd respondent, therefore, was of the view that the ground floor and the 1st floor could not be treated as separate buildings for the purposes of separate assessments under the Kerala Building Tax Act. He, therefore, confirmed Ext. P9 order by which the entire building was assessed as a single building for the purposes of building tax. Although, the petitioner preferred a further revision before the 1st respondent, in terms of Section 14 of the Kerala Building Tax Act, the said revision was also dismissed by the 1st respondent by Ext. P17 order. In Ext. P17 order, the 1st respondent basically reiterates the same findings as of the 2nd respondent, while dismissing the revision petition. In the writ petition, Exts. P9, P13, P15, P17 orders as well as Ext. P20 revenue recovery notice are impugned.

2. A counter affidavit has been filed on behalf of the 2nd respondent wherein the sequence of events leading to the passing of orders by the 1st and 2nd respondents are narrated. The impugned orders are sought to be justified on the ground that the ground floor and 1st floor of the building, although stated to be under separate ownership of the husband and wife, were essentially a part of the same dwelling unit in that there was no separate entrance to the 1st floor of the building and further, that the stair case to the 1st floor was from the living room on the ground floor. Reliance is also placed on the statement taken from the 2nd petitioner, during the course of the proceedings before the respondent authority, which indicated that till such time as there was any family dispute between the members of the family, they could freely enjoy both the floors as a single home. The reason that primarily weighed with the 1st respondent namely, that the building in question was situated in the property owned by the husband and that the wife did not have any right over the landed property, is also highlighted in the counter affidavit.

3. I have heard Sri. P. Ramnath, the learned counsel appearing for the petitioner as also Sri. Bobby John Pulickaparambil, the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that Exts. P15 and P17 orders, passed by the 2nd and 1st respondent respectively, suffer from a patent non-application

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of mind with regard to the issues that are germane to a consideration of the question as to whether, a building that is constructed should be assessed as a single unit or a separate unit for the purposes of the Kerala Building Tax Act. As per the Scheme of the Act, the levy of tax is on a building that is constructed after the cut-off date specified in the Act. While under normal circumstances, the building as a whole would have to be treated as a single unit for the purposes of tax, an exception is carved out in cases covered by Explanation 2 to Section 2(e) of the Act. As per the said explanation, where the building consists of different apartments or flats, owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartments or flats shall be deemed to be a separate building. It is apparent from a reading of the Explanation, therefore, that for the building to be assessed as separate units, it must be shown that:

"1. The building consists of different apartments or flats.

2. The said apartments or flats are owned by different persons.

3. That the cost of construction of the building was met by all such persons jointly."

5. On the facts of the case at hand, it has to be seen whether the ground floor and first floor of the building could be seen as separate apartments or flats owned by separate persons. As regards the aspect of sharing of the cost of construction by the separate owners, the fact that the 2nd petitioner had, prior to construction of the 1st floor, obtained rights over the portion of the land on which the building was constructed and thereafter, the ownership of the 1st floor of the building also, becomes relevant. Exts. P15 and P17 orders, passed by the 2nd and 1st respondent respectively, do not show any advertence to these aspects while taking a decision adverse to the petitioners and rejecting their revision petitions. In my view, it is incumbent upon the 2nd respondent revisional authority to go in to these matters and understand the Scheme of the Kerala Building Tax Act, 1975 as noted above, while taking a decision with regard to the manner in which the assessment of the building has to be done. In that process, he would have to consider the documents produced by the petitioners to establish their ownership over the land and the building, and also such documents as would indicate that the buildings are under separate ownership, and other documents which would show that the cost of construction of the building was also met by them jointly. The 2nd respondent must also necessarily take note of the decisions of this Court in Nelson Rozario Vs. State of Kerala, , Varghese Vs. State of Kerala, , Natarajan G. and Others Vs. State of Kerala and Others, , Pavan Kumar P. Vs. State of Kerala and Others, and The Tahsildar Vs. Soman Peter, .

6. To enable the 2nd respondent to take a fresh decision in the matter, I quash Exts. P15 and P17 orders and Ext. P20 RR notice and direct him to consider the matter afresh, after affording the petitioners an opportunity of being heard, and

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pass orders in the matter within a period of three months from the date of receipt of copy of this judgment. The 2nd respondent shall, while passing orders in the matter, advert to the documents produced by the petitioners in support of their contentions and also give reasons for the decision taken by him in the matter.

With these directions, the writ petition is disposed.

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