

(2014) 10 KL CK 0275
In the High Court Of Kerala
Case No : WP (C). No. 11417 of 2008 (H)

Mary Lonappan

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 01-10-2014

Acts Referred:

Kerala Building Tax Act, 1975 — Section 5(3)

Citation : (2014) 10 KL CK 0275

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

Bench : Single Bench

Advocate : Abraham Vakkanal, Sr. Adv., Paul Abraham Vakkanal, Arul Kumar. P., Bijimon C. Cherian and Lowel Cherian, Advocate for the Appellant; Liju V. Stephen, Sr. Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner is aggrieved by Ext. P13 order passed by the 1st respondent in connection with the building tax assessment of the petitioner's building. It is the case of the petitioner that while in 1994, she had completed the additional construction on an old house which was constructed in 1968, the respondents while completing the assessment in respect of the additional construction effected by the petitioner, included even the plinth area of the house that was constructed in 1968. She had produced Ext. P2 plan showing the plinth area pertaining to the additional construction that was proposed and this showed an area of only 242.70 sq. metres. The assessment to building tax however, was made by the 3rd respondent Tahsildar by taking the total plinth area as 390 sq. metres in Ext. P6 order. In an appeal filed by the petitioner before the 2nd respondent, the 2nd respondent chose not to interfere with the findings of the 3rd respondent and rejected the appeal vide Ext. P8 order dated 08.01.1999. A further revision preferred by the petitioner before the 1st respondent also did not meet with any success. The petitioner therefore approached this Court through W.P. (C). No. 21187 of 1999 which was disposed by Ext. P11 judgment dated 07.09.2007 directing the 1st respondent to reconsider the matter and pass fresh orders. It is the petitioner's case that

thereafter, she approached the District Collector and even submitted Ext. P12 hearing note before the 1st respondent. The 1st respondent however, without averting to the documents produced by the petitioner, proceeded to confirm the assessment by adopting the Plinth area of the new construction as 390 sq. metres. Ext. P13 dated 01.04.2008 is the order of the 1st respondent, which is impugned in the writ petition.

2. A counter affidavit has been filed on behalf of the 1st respondent wherein Ext. P13 order is sought to be justified by pointing out that the findings therein were rendered solely on account of the fact that the petitioner had not produced any document to show the plinth area that pertained to the old building and that which pertained to the additional construction that was effected in 1994. It is pointed out that, in the absence of any document to show the actual plinth area of the additional construction, the 1st respondent had no other option but to confirm the assessment already done by the Tahsildar in Ext. P6 order.

3. I have heard Sri. Paul Abraham Vakkannal, the learned counsel appearing on behalf of the petitioner as also the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case, I note that while completing the assessment pursuant to directions of this Court in Ext. P11 judgment the 1st respondent has confirmed the assessment on the petitioner by taking the entire plinth area of the building as 390 sq. metres and assessing the petitioner on that basis. It is relevant to note that it is not the case of the 1st respondent in Ext. P13 order that there was no building that existed in the property prior to 1992. The only reason stated by the 1st respondent for confirming the assessment on the petitioner is that the documents produced by the petitioner were insufficient for ascertaining the exact plinth area of the old portion as well as the improvement portion. Thus, the 1st respondent does not deny the existence of an old portion of the building and, therefore, even in a situation where the petitioner did not produce materials to show the exact plinth area covered by the new construction, the 1st respondent had necessarily to determine, through a best judgment assessment, a plinth area that was attributable to the old portion of the building as well. This has not been done by the 1st respondent in Ext. P13 order. It is relevant to note that going by the provisions of the Kerala Building Tax Act particularly Section 5(3) thereof, charge of building tax, in a case where a major repair or improvement is made, on or after the appointed date, to a building constructed before the said date, can only be in respect of the additional plinth area of the building resulting from such repair or improvement. It is evident from a perusal of the said provision that the authorities under the Kerala Building Tax Act, 1975, do not have a jurisdiction to assess the building tax, based on plinth area, in respect of a building the construction of which was completed before the appointed date. In the instant case, therefore, there was no justification for including any portion of the old building while completing the assessment pertaining to the new construction that

was effected on the old building. Ext. P13 order of the 1st respondent is therefore vitiated by an error of law and is hence quashed.

5. The learned Government Pleader appearing on behalf of the respondents would point out that even in the building plan that was submitted by the petitioner, at the time of hearing before the District Collector, the addition of the plinth area pertaining to the ground floor and the 1st floor of the new construction is seen as erroneous. The plan shows that the ground floor has a plinth area of 118.80 sq. metres and the 1st floor a plinth area of 152.90 sq. metres. The total however is shown as 242.70 sq. metres whereas it should be 271.70 sq. metres. In my view, the petitioner would be required to pay property tax in accordance with the Kerala Building Tax Act, 1975, on this area which pertains to the construction effected after the appointed date. The 3rd respondent is directed to recompute the building tax payable by the petitioner on the aforementioned area and intimate the same to the petitioner within a period of three weeks from the date of receipt of a copy of the judgment. While intimating the amounts to be paid by the petitioner on the aforesaid basis, the 3rd respondent shall take into account the amounts already paid by the petitioner towards building tax, stated to be an amount of Rs. 11,405/-, and raise a demand only for the balance amount, if any, that is found due and payable by the petitioner. Although the learned counsel for the petitioner would also contend that the rate of tax applicable would be that prevailing in 1994 when, according to the petitioner, the new construction was completed, I am of the view that in the absence of any document save self serving documents produced by the petitioner, to suggest that the construction was completed in 1994, it is the rate prevailing as on the date of assessment that must govern the liability of the petitioner for building tax. The 3rd respondent while determining the tax liability of the petitioner as directed above shall take into account the aforesaid aspect as well.

The writ petition is disposed as above.