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**(1993) 03 KL CK 0051**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 2850 of 1993-L**

Mrs. Safia Rahman

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

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**Date of Decision :** 12-03-1993

**Acts Referred:**

Kerala Building Tax (Amendment) Act, 1992 — Section 13  
Kerala Building Tax Act, 1975 — Section 13(4)

**Citation :** AIR 1994 Ker 168 : (1994) 2 ILR (Ker) 107

**Hon'ble Judges :** T.L. Viswanatha Iyer, J

**Bench :** Single Bench

**Advocate :** D. Krishna Prasad, for the Appellant; C.K. Abdul Rahim, G.P., for the Respondent

**Final Decision :** Allowed

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## Judgement

T.L. Viswanatha, J.—The matter in issue in this writ petition does not really admit of any doubt, but the authorities concerned do not appear to be quite familiar with the true legal position so that I have felt it necessary to clarify the matter to avoid parties being unnecessarily driven to this court for redress.

2. The petitioner is the owner of a building, the construction of which was completed on 13-1-1989. The return under the Kerala Building Tax Act, 1975 was filed on 5-11-1990, the return being filed u/s 7 thereof. The matter was heard by the assessing authority and eventually he passed an order Ext. P1 on 18-1-1992 u/s 9, fixing the capital value of the building at Rs. 7,53,300/- and determining the tax payable at Rs.49,080/-. The petitioner felt aggrieved by the assessment and he challenged it in appeal, though unsuccessfully, before the Revenue Divisional Officer at Palakkad u/s 11 of the Act. Thereafter he filed a revision petition before the District Collector u/s 13, challenging the two adverse orders. That was in the first week of January 1993,

3. Section 13 as it" originally stood, provided an unconditional revision, that is, a revision which was not hedged in by any condition of payment of the whole or

any portion of the tax assessed for its maintainability. But Section 13 was amended by the Kerala Building Tax (Amendment) Act 3 of 1992 with effect from 10-2-1992, by adding Sub-clause (4) thereto, stipulating that no application for revision shall lie unless fifty percent of the building tax due was paid. The petitioner's revision petition before the District Collector was filed after this amendment to Section 13 came into force. The District Collector refused to take the revision petition on file, and he informed the petitioner by his proceedings Ext. P4 that since the petitioner had not remitted 50% of the building tax assessed, the revision petition could not be taken on file. It is this proceeding Ext. P4 dated 29-1-1993 that is challenged in this writ petition. The petitioner's submission is that since the proceedings under the Act which resulted in the revision petition, had been initiated prior to the amendment to Section 13, he was not bound by the condition imposed by the newly introduced Sub-section (4) and that the revision petition was maintainable without the deposit contemplated by the sub-section. She submits that she had a right to move in revision before the District Collector uninhibited by the condition imposed by the amendment. She submits that the right to the statutory remedies available under the Act vested in her as soon as the return was filed on 5-11-1990 and this vested right cannot be divested except by specific provision, or by necessary intendment in the subsequent amendment. No such provision exists in the amendment Act. The District Collector was therefore not justified in refusing to entertain the revision petition for non-payment of 50% of the tax assessed as under the amended Section 15.

4. So far as civil proceedings are concerned, it is now beyond doubt that a right of appeal vests in the parties to the litigation, on the date of institution of the suit or proceeding and continues to vest in, and be available to them, with all its amplitude, despite any subsequent amendment to the law, unless the amendment, either expressly or by necessary intendment takes away the right of appeal altogether, or imposes limitations, restrictions or conditions therein, either regarding its maintainability, or regarding the quality or the content of the appeal, or the power of the appellate court. (Vide *Colonial Sugar Refining Co. v. Irving*, 1905 Appeal Cases 369 which was accepted and reiterated by the Supreme Court in *Garikapatti Veeraya Vs. N. Subbiah Choudhury*, This principle has been followed and applied to different situations in numerous subsequent cases which it is unnecessary to recount, in view of the consideration thereof in the decision in *Philip v. Surendran* 1992 (2) KLT 556 by a Bench, of which I was a member, where the question considered was whether the condition of making deposit of Rupees. 25,000/- for the maintainability of an appeal u/s 173 of the Motor Vehicles Act, 1988, which came into force on 1-7-1989 was applicable to appeals arising out of proceedings instituted before that date. It was held that an unconditional right of appeal had vested in the parties under the Motor Vehicles Act, 1939, on the date of institution of the proceedings and it continued unaffected by the subsequent law, and therefore the new condition imposed by Section 173 of the 1988 Act was not attracted to appeals arising out of

applications filed prior to 1-7-1989. The same principle was applied by me in another decision in *Preetha Jayaraj Senan v. State* 1992 (2) KLJ 344, where I held that a right of appeal which was available to a party u/s 45A of the Kerala Stamp Act was not affected by the repeal of the said section subsequent to the passing of the impugned order but before the filing of the appeal. Since the matter has been elaborately discussed in those two decisions, it is unnecessary for me to burden this judgment with another detailed consideration of the decisions and of the principle to be deduced therefrom. Suffice it to say that whatever has been stated in relation to right of appeal in a civil proceeding must apply equally to any proceeding under a special statute. In this context, I may also mention that no distinction can be made on this point between the right of appeal and a proceeding in revision, inasmuch as the remedy of revision statutorily provided is also a right which is available to a party aggrieved and vests in him as and when the his commences. As was observed in *Garikapati Veerayya*, the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding. A statutory remedy of revision (albeit couched in discretionary terms) is one available to the aggrieved party as of right and cannot be negated except on grounds specified in the statutory provision itself. The uninhibited remedy of revision, which was available to the owner of a building before the amendment to Section 13 by Act 3 of 1992 and which he could invoke by filing application for the purpose, could not be denied to him based on conditions imposed by the amendment which had no retrospective effect. That right of his, which inhered in him earlier, has not been taken away by anything contained in the amending Act 3 of 1992. Therefore, the right of appeal or the right of revision which inhered in the owner of the building prior to the amendment by Act 3 of 1992 continues to subsist with all its vigour and in all its amplitude, unaffected by any conditions or inhibitions subsequently imposed by the Act. There is nothing in the amending Act to show that the provisions contained therein were intended to have retrospective effect to affect rights which had already accrued. I have in the judgment in *Philip's* case held that the test to see whether the vested right has been divested or not is to examine the provisions of the amending Act to ascertain whether it contained anything destroying existing rights, and not to see whether the existing rights are preserved. Viewed in that angle there is nothing in Act 3 of 1992 affecting in any manner the right of appeal or revision which inhered in a party before the date of that enactment.

5. What the District Collector has done in Ext. P4 is to import the provisions of the amendment Act 3 of 1992 for the purpose of a revision arising out of an order passed prior to the amendment. I have indicated in the decision in *Preetha Jayaraj Senan* 1992 (2) KLJ 344, that the fact that the appeal or revision is filed subsequent to the amendment is not sufficient to attract the conditions imposed by the amendment to the appeal or revision. If this be so, the Collector's order Ext. P 4 requiring the petitioner to make deposit of 50% of the tax in dispute as

a condition for the maintainability of the revision petition is unsustainable in law and is liable to be quashed.

6. Accordingly I allow the original petition and quash Ext. P4. The District Collector namely the 2nd respondent is directed to take petitioner's revision petition Ext. P 3 back on file and dispose it of on merits with all expedition. Pending disposal of the revision petition proceedings for recovery of the amount demanded of the petitioner will be kept in abeyance.