(2013) 09 KL CK 0004

In the High Court Of Kerala

Case No : W.A. No. 370 of 2006

Natarajan G. and Others — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 25-09-2013

Acts Referred:

Citation : (2013) 4 KHC 306 : (2013) 4 KLT 364

Hon'ble Judges : Manjula Chellur, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : O. Ramachandran Nambiar and Geen T. Mathew, for the Appellant; Sebastian Chempapallil, Special Government Pleader, for the Respondent

Judgement

Dr. Manjula Chellur, C.J.—Heard learned counsel for the appellants-assessees as well as Government Pleader representing the respondents-Departments. The appellants herein by virtue of an agreement between them under Annexure-A1 pooled three different portions of property belonging to them situated adjacent to each other and constructed a building consisting of seven shops and one office block apart from other amenities. It is also placed on record that under four different sale documents, Annexures-A2, A3, A4 and A5, they purchased the land upon which the building in question came to be constructed.

2. When the building tax assessment issue came up, the Department assessed the entire building as one unit and sent a demand notice as per Ext. P1. Aggrieved by the same, the appellants filed an appeal and Ext. P2 order dated 11/07/2000 came to be passed by the Revenue Divisional Officer, Thiruvananthapuram rejecting the claim of the appellants opining that the building in question will not come within Explanation 2 to Section 2(e) of the Kerala Building Tax Act (hereinafter referred to as ''the Act''). Aggrieved by the said order, a revision came to be filed before the District Collector and the District Collector vide Ext. P3 dismissed the revision petition. Therefore, the appellants approached this Court in OP No. 25510 of 2001. The learned Single Judge, after considering the stand of the appellants as well as the respondents-

authorities, placing reliance on the decision reported in Rasheed Vs. Tahsildar, opined that the building in question cannot be treated as separate apartments or flats as contemplated under Explanation 2 to Section 2(e) of the Act. Therefore, the petition came to be dismissed as devoid of merits. Aggrieved by the same, the present appeal is filed challenging the judgment of the learned Single Judge which confirmed three orders of the authorities.

3. According to the appellants, apart from the judgment reported in Bhattathiripad v. Tahsildar 1994 KHC 171 : 1994 (1) KLT 790, the Division Bench judgment of this Court reported in Lissy Lyju and Another Vs. Tahsildar and Others, is also applicable to the facts of the present case and even otherwise factually when the plan pertaining to the building in question is perused, it clearly indicates different portions of the buildings having separate entrances with demarcation and, therefore, there was no justification to consider the entire construction as one unit to assess the building tax under the above Act. He placed reliance on Explanation 2 to contend that even commercial activity conducted in a portion of the building could be considered as a flat as opined in the Division Bench judgment of this Court and seeks for the relief of allowing the appeal with a direction to the respondents-authorities to assess the individual shop portions separately as claimed by the appellants.

4. As against this, learned Government Pleader placing reliance on the decisions reported in Thomas v. Tahsildar 2008 (2) KHC 907 : 2008 (2) KLT 934 : ILR 2008 (2) Ker. 657 and also Varghese Vs. State of Kerala, contends that in the light of common areas, as common amenities are enjoyed by the appellants so far as different portions of the constructions are subjected to assessment, the shops cannot be considered as independent entities and they have to be considered as a single unit. Another argument put forth by learned Government Pleader is that there has to be evidence to show that appellants have met the cost of construction jointly as contemplated under Explanation 2.

5. Learned Government Pleader as well as learned counsel appearing for the appellants have placed on record the sanctioned plan so far as the construction in question. Admittedly, this is a commercial complex put up by the appellants consisting of ground floor and first floor. In each floor, there are seven shops apart from two toilets plus office space. So far as shops are concerned, it is demarcated clearly by walls on three sides with a shutter for the entry into the shop. No doubt, the entire building has common stair case to reach the first floor and so far as the shops both in the ground floor and the first floor, the entrance is by a rolling shutters. Though learned counsel for the appellants submits, the portions are demarcated by beams, so far as office hall, we find, there is no separate walls demarcating the portions of the individual owners. With this factual situation, one has to see how Explanation 2 to Section 2(e) of the Act is applicable to the facts of the present case.

6. Section 2(e) and Explanation 2 reads as under:

2. Definitions.--In this Act, unless the context otherwise requires.--

xxxx xxxx xxxx

xxxx xxxx xxxx

(e) "building" means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure.

xxxx xxxx xxxx

Explanation 2.--Where a 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 apartment or flat shall be deemed to be a separate building.

7. Thomas''s case (supra) is a judgment by a learned Single Judge and we need not place any reliance on the same in the light of the judgment of the Division Bench reported in Lissy''s case (supra) so far as Explanation 2 to Section 2(e) of the Act. While considering the term ''flat'' used in Explanation 2, the question that arose before their Lordships in the above Division Bench Case was whether the flat could be limited to residential purpose only or it could be extended to commercial purpose as well. So far as the word ''apartment'' used in Explanation 2, their Lordships clearly opined that it may not apply to commercial complex, but the term ''flat'' can be used for business also in the light of the meaning given in the Black''s Laws Dictionary to the word ''flat''. They also interpreted the words used in Explanation 2 and why Legislature has used both the words as ''apartment'' and ''flat''. Their Lordships opined that if the intention of the Legislature was to mean ''flat'' and apartment'' as one and the same, there was no necessity to use both the words ''flat'' and ''apartment'' in Explanation 2. Therefore, their Lordships after referring to Black''s Law Dictionary wherein it is stated that the term ''flat'' could even mean as premises used for commercial purpose, opined that the word ''flat'' used in Explanation 2 to Section 2(e) takes within its fold commercial portion as well. Explanation 2 to Section 2(e) of the Act clearly indicates that if the building consists of different flats owned by different persons and the cost of construction of such building was met by all such persons jointly, each of such flat shall be deemed to be separate building. As the shops in question deserve to be considered as flats under Explanation 2, one has to see whether the cost for the construction was incurred by them jointly while constructing the building. Annexure-A1 clearly indicates how the cost of construction was met by the owners, i.e. the appellants. So far as seven shops in the first floor and the ground floor, they can definitely be identified separately, as there is clear demarcation of each portion. It is evident that there is no demarcating walls so far as the office hall in both the floors are concerned. Therefore, it cannot be assessed in the individual names of the appellants. The

office hall both in the ground floor and the first floor deserve to be assessed as a single unit. So far as the common areas are concerned, depending upon the plinth area, the assessing authority can divide the common portion proportionately depending upon the materials placed before the assessing authority. In that view of the matter, we allow the appeal in part opining that the shops in the ground floor and the first floor deserve to be assessed individually as claimed by the appellants in their claim and so far as the office hall, it has to be considered as a single unit. The parties shall bear their own respective cost.

The respondents-authorities are directed to assess the building in question in the light of the above directions in accordance with the procedure.

