

(2016) 03 SC CK 0025

In the Supreme Court Of India

Case No : Civil Appeal No(s). 1822 of 2006

N.C.K. Tourist Home (Pvt.) Ltd.

APPELLANT

Vs

Kozhikode Nagara Sabha

RESPONDENT

Date of Decision : 04-03-2016

Acts Referred:

Kerala Municipalities Act, 1994 — Section 238

Citation : (2016) 2 KHC 648 : (2016) 3 Scale 608 : (2016) 13 SCC 265

Hon'ble Judges : A.K. Sikri; Rohinton Fali Nariman, JJ.

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellant owns a lodging-cum-shopping complex viz. N.C.K. Tourist Home Pvt. Ltd. at Kozhikode, Kerala. There are nine buildings which are part of the shopping complex. The respondent, Kozhikode Corporation separately assessed the nine buildings having assessment nos. 5/3357, 5/33578, 5/3359, 5/3361, 5/3362, 5/3363, 5/3365, 5/3365-A and 5/3366. The Corporation issued notices to review the annual rental value of the building for five years period. On receipt of the notices, the appellant filed objections and the Corporation reviewed the property tax. Subsequently, the Secretary of the Corporation issued special notices on the ground that the annual rental value fixed with effect from 01.04.1995 is under assessment and proposed to revise the annual rental value of all the aforesaid assessments. Being aggrieved, the appellant filed a revision before the Commissioner objecting to the proposal. The Commissioner as per the proceedings No. A5/516/96-97 dated 16.07.1996 confirmed the proposal of enhancement. Aggrieved by the order of the Commissioner, the appellant preferred an appeal before the Standing Committee for Taxation and Finance of the respondent-Corporation which was dismissed. The appellant carried the matter by filing a Civil Miscellaneous Appeal before the District Court, Kozhikode contending inter alia that the proposal of enhancement within one year of the general revision was unjustified and unreasonable. The District Court dismissed

the appeal stating that the question was only regarding the quantum of enhancement and no other grounds are taken in the appeal. The appellant being dissatisfied filed a revision petition before the High Court of Kerala which was dismissed by holding that the Commissioner of the Municipal Corporation has the power to amend the amount of tax payable in between the quinquennial revision as per the Rules.

2. As it is clear from the above, the notice for revising the property tax was given before the expiry of five years of the period. The appellant herein challenged this notice, taking shelter under Section 238 of the Kerala Municipalities Act, 1994 (hereinafter referred to as "the Act"), with the contention that it was not permissible for the respondent-authorities to make any revision in the property tax before the expiry of five years. This contention is not accepted, notwithstanding the existence of a categorical stipulation to this effect in Section 238 of the Act inasmuch as the High Court has fallen back to Rule 2A of the Taxation Rules which were made under the earlier enactments viz. Kerala Municipalities Act, 1960 and Municipal Corporations Act, 1961. For proper understanding of the matter, we re-produce herein below Section 238 of the Municipalities Act, 1994 as well as Rule 2A of the Taxation Rules.

"Section 238. Revision and time of payment of property tax - Subject to the rules made by Government the property tax shall be assessed and the half-yearly tax determined once in every five years and the half-yearly tax shall be payable by the owner of the assessed property within thirty days of the commencement of the each half-year.

Provided that except in the case of substantial improvements or addition to an existing building since the last assessment, the annual value of any building shall not exceed the limit, if any, fixed by the Government from time to time.

Provided that revision of tax after date of first April, 1998, shall come into force on the date fixed by the Government."

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"Rule 2A(i) If at any time it appears to the Standing Committee that any person or property has been inadequately assessed or inadvertently or improperly omitted from the assessment books relating to any tax, arithmetical error in the said books, it may direct the Commissioner to amend the said books in such manner as it deems just or necessary.

Provided that on such direction shall be given where it involved an increase in the assessment, unless the person concerned shall have been afforded a reasonable opportunity to show cause to the standing committee why the assessment books should not be amended as proposed.

(ii) Such amendment shall be deemed to have taken effect on the earliest date, either in the current half year or in the two half years immediately preceding it, on which the circumstances justifying the agreement existed."

3. As per the High Court, since the provisions of Section 238 are "subject to the Rules made by the Government", and as Rule 2A prescribes the period of two half years for revising the property tax, the show cause notice issued was valid in law. It is difficult to countenance the aforesaid rationale given by the High Court. No doubt, Section 238 is subject to the Rules that can be made by the Government. However, those Rules contemplate the procedure that is to be followed while making assessment. In any case, when there is a substantive provision made in Section 238 to the effect that the tax shall be assessed once in every five years, Rule 2A which lays down lesser period is clearly contrary to the aforesaid substantive provisions of Section 238 of the enactment and, therefore, it will have to be treated as ultra vires the provisions of Section 238 as mentioned above. Rule 2A was framed under the old Kerala Municipalities Act. After coming into force of the new Act i.e. Kerala Municipalities Act, 1994 with the provisions of the kind mentioned above i.e. Section 238 of the Act, to the extent Rule 2A is contrary to the aforesaid provisions, it has to be held as contrary to the substantive provisions and not effective at all.

4. No doubt, if there is some change made in the property in question by making further construction etc. that may empower or authorize the Assessing Authority to issue notice even before the expiry of five years. For that, reasons are to be given as is stated in Rule 2A. In the instant case, we find from the reading of the show cause notice that no such reasons were assigned. The show cause notice had to be treated as illegal and not in accordance with the prescribed Rules even on this ground.

5. We, thus, allow this appeal and set aside the impugned order.