
(2004) 06 KL CK 0034
In the High Court Of Kerala
Case No : CRP No. 711 of 2000 (C)

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

APPELLANT

Vs

Kozhikode Nagara Sabha

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Kerala Municipalities Act, 1994 — Section 104

Citation : (2004) 2 KLJ 240 : (2004) 2 KLT 839

Hon'ble Judges : R. Bhaskaran, J

Bench : Single Bench

Advocate : C.P. Mohammed Nias, for the Appellant; K.P.G. Menon (SC), for the Respondent

Judgement

R. Bhaskaran, J.—This revision is filed against the order passed by the District Court in appeal filed under Rule 24 of Taxation Rules in Schedule II of the Municipal Corporations Act, 1961. The petitioner is N.C.K. Tourist Home (Pvt.) Ltd., which owns a lodging cum shopping complex near Mavoor Road in Kozhikode. The short point for consideration in the revision is whether the respondent -Corporation of Calicut is entitled to revise the property tax before the expiry of the five years after the general revision in 1994. It is the case of the petitioner that once the general revision is made the Corporation has to wait for five years to make any increase in the property tax and any change enhancing the tax within such period will be without jurisdiction, illegal and unenforceable. The District Court has stated that there is no challenge regarding the validity of the notice issued by the Secretary or about the power of the Secretary to issue such a notice under the provisions of the Municipalities Act. According to the revision petitioner, this observation is incorrect as there is specific ground made in the appeal memorandum with respect to such want of power. On a perusal of the appeal memorandum, I also find that there is specific ground raised in it and the observation to the contrary in the judgment may not be correct. However, there is every reason to think that such a contention was not seriously argued before the learned Judge as otherwise the learned Judge

would have dealt with such a contention also. Since this is a purely legal aspect, there is nothing wrong in considering the question in this revision and I proceed to do so. There are nine buildings which are part of the shopping complex which are separately assessed. The learned District Judge has elaborately discussed about the merit of the case and found that the enhancement was justified on the facts of each assessment when the actual rent paid by the tenants are taken into account and nothing is brought to my notice to upset that finding if there is power for the Municipality to enhance the tax. For example, for door No. 5/3357, Rs. 850/- was the half yearly tax fixed in 1994. It was enhanced to Rs. 1,641/- in 1996. The agreement of tenancy showed monthly rent of Rs. 3,000/- which is divided into two parts (Rs. 1,500/- actual rent and Rs. 1,500/- for amenities). Re-fixation of tax is fixed on the basis that monthly rent is only Rs. 1,500/-. The actual rent obtained by the landlord is an important aspect while determining the annual value of the building under S. 233 of the Kerala Municipalities Act. There is no contention that the tax as re-fixed is beyond the limit prescribed in S. 233 of the Act. Even otherwise a re-assessment of tax on the basis of a reappraisal of the facts and materials in the case is beyond the attenuated jurisdiction of a revisional court. It is however true that substantial enhancement of tax is made immediately after the general revision in 1994.

2. The learned counsel for the respondent made available the entire file relating to the assessment of property tax to me and I perused the same. It is seen that notice was issued to the petitioner on the basis that there was under assessment in the general revision made in 1994. The question is whether the Corporation is entitled to do so.

3. Section 238 of the Kerala Municipalities Act, 1994, reads as follows:

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 the date of first April, 1998, shall come into force on the date fixed by the Government.

The corresponding provision in the 1961 Act is Sec. 104. The Section expressly states "subject to rules", sub-section 2(ii) of S. 575 of the Act, will show that any rules made under Kerala Municipalities Act, 1960, and Municipal Corporations Act, 1961, shall in so far as they are not inconsistent with the provisions of the Act, continue to be in force as if made under the provisions of Act of 1994 until modified by any rule made under the Act. Therefore, the rules made under the 1961 Act will apply to the facts of the case. In fact the revision petitioner has

filed the appeal before the District Court under the very same Rules. Rule 2A of the Taxation Rules under Schedule II of the Municipal Corporations Act reads as follows:

2 A(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, or that there is any clerical or 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 involves 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 proceeding it, on which the circumstances justifying the agreement existed.

As already stated earlier, notices for revisions of tax, were issued on the basis of under assessment in the assessment already made and hence there is authority for the respondent to get the tax revised. In *Damodaran v. State of Kerala* (1989(1) KLT 373), this Court has stated that Commissioner has got such powers and I respectfully follow the dictum laid down in that judgment. In *Kochuthressia Antony v. Angamali Municipality* (1998 (2) KLT 625), this Court was concerned about the maximum and minimum increase in general revision and did not deal with a case of underassessment at the time of the previous revision.

In view of the above discussion, there is no merit in the revision and it is dismissed without any order as to costs.