(2011) 03 KL CK 0046

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6436 of 2011

Nehrad Naina	APPELLANT
Vs	
District Collector Ernakulam and Others	RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Kerala Building Tax Act, 1975 — Section 2(k)

Citation : (2011) 3 KLJ 1 : (2011) 2 KLT 810

Hon'ble Judges : C.K. Abdul Rahim, J

Bench : Single Bench

Advocate : V.V. Asokan and R. Jaikrishna, for the Appellant; Bijoy Chandran (GP), for the Respondent

Judgement

C.K. Abdul Rahim, J.—Petitioner is challenging the assessment of Building Tax finalised against him, under the provisions of the Kerala Building Tax Act, 1975, which was confirmed in appeal and further in revision, as per Ext.P5 and P7. Main contention of the petitioner is that there is a mistake committed by the assessing authority while computing the plinth area of the building. According to the petitioner, the plinth area of the building is only 262.42 Sq. Metres, as per Ext.P1 plan, on the basis of which the construction was sanctioned and completed. The assessment was completed reckoning the plinth area as 297.53 Sq. Metres. The appellate authority as well as the revisional authority concurrently found that, the Deputy Tahsildar had conducted measurement of the building and it was re-measured by the Tahsildar, and the plinth area was found to be 297.53 Square Metres.

2. Specific contention of the petitioner is that, the measurement was done not in a proper manner, excluding the area covered by staircase constructed outside the floor of the building which is leading to the first floor and also the area covered by the sunshade portion protruding from the wall of the building situated in the first floor. But it is noticed that neither the appellate authority nor the revisional authority had evaluated such a contention in its real perspective. On the other

hand, the statutory petitions were dismissed holding that the measurement conducted by the Deputy Tahsildar as well as the Tahsildar is confirming the plinth area as assessed.

3. Question arises as to how the plinth area of a building is to be calculated, for the purpose of assessment of Building Tax. The term ''plinth area'' is defined u/s 2(k) of the Act, as the area included in the floor of a building and as the aggregate area of all floors, when there is more than one floor. Whether the area of any structures like staircase or sunshade, built outside the floor of the building, can also be reckoned while computing the plinth area, or in a case where there is a ''cut-open area'' in the upper floors, whether such area can be reckoned are all matters need consideration. It is noticed that neither the Building Tax Act, nor any Rules framed thereunder provides any procedure or guidelines in this regard. Therefore the definitions provided or the parameters prescribed with respect to the term, ''plinth area'' in the Kerala Building Rules or in the Kerala Municipality Building Rules or those contained in the Engineers'' Manual Books, can be adopted for appropriate decision in such situation.

4. The petitioner had already remitted 50% of the amount assessed. Contention of the petitioner is that, if measurement is conducted by any competent and expert authority of the State Government, it will be revealed that the plinth area reckoned is not correct. I am of the view that interest of justice will be served if a measurement is conducted through an expert authority of the State Government, at the expense of the petitioner. Hence, by remanding the matter to the 1st respondent with a direction to conduct such a measurement will redress grievances of the petitioner, is my opinion.

5. Under the above mentioned circumstances, the writ petition is disposed of quashing Ext.P7 revisional order of the 1st respondent District Collector. The 1st respondent is directed to take back the revision petition on his files and to dispose of the same afresh, after conducting measurement of the plinth area of the building through the Assistant Executive Engineer of Public Works Department of the State Government, having jurisdiction over the local area wherein the building is situated. Such measurement shall be directed to be conducted with due notice to the petitioner and the assessing authority. The expert authority should take note of the observations contained herein above, while calculating total plinth area of the building.

6. The expense if any of the measurement to be conducted through the expert, shall be met by the petitioner. Fresh orders on the basis of the report of such measurement shall be issued by the 1st respondent, after affording an opportunity of hearing to the petitioner.

7. The petitioner will not be entitled to raise any further challenge against the decision based on such measurement. Final orders in this regard shall be issued by the 1st respondent as early as possible, at any rate within a period of two months from the date of receipt of a copy of this Judgment. Till such time fresh

orders are passed by the revisional authority as directed above, recovery of the balance amount of tax due on the basis of Ext.P3, shall be kept in abeyance.

