
(2013) 01 KL CK 0165
In the High Court Of Kerala
Case No : Writ Petition (C) No. 3595 of 2011

Nelson Rozario

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 2(e)

Citation : (2013) 2 KLJ 331 : (2013) 1 KLT 573 : (2013) 60 VST 203

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : N.C. Joseph, for the Appellant; Joseph George, Sr. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—Petitioners challenge levy of luxury tax under S. 5A of the Kerala Building Tax Act. Petitioners state that, 6 cents of land comprised in Sy. No. 992/5 of Thoppumpady Village was purchased by the first petitioner and the second petitioner's wife. Thereafter, first petitioner along with the second petitioner's wife entered into Ext. P1 agreement where they agreed that the ground floor will be constructed by the first petitioner and the first floor will be constructed by the second petitioner. Accordingly, a two storied building was constructed and the petitioners are residing in the respective portion of the building owned by them. Although the building was separately numbered by the Corporation, treating the entire building as one unit, luxury tax as provided under S. 5A of the Kerala Building Tax Act was levied by order dated 15.7.05. Appeal filed before the Revenue Divisional Officer was rejected by order dated 14.12.05. Thereafter revision was filed before the District Collector, who by order dated 4.10.2006 remitted the matter to the Tahsildar for fresh assessment. Accordingly, the Tahsildar assessed luxury tax as per order dated 4.9.2007. Challenging the levy of luxury tax, petitioners filed appeal before the Revenue Divisional Officer, which was rejected by Ext. P11 order. Revision filed before the

District Collector was also rejected by Ext. P10 order. It is in these circumstances, the Writ Petition is filed. The contention raised by the learned counsel for the petitioners is that the ground and first floors of the building are owned by petitioners 1 and 2. These buildings are separate and distinct and were constructed utilising the contribution made by petitioners 1 and 2 separately. Therefore, according to him, the building should have been assessed separately.

2. Section 2(e) of the Kerala Building Tax Act defines "building". As per 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. Therefore, for a building with different apartments to qualify for assessment as separate buildings, there must be evidence to prove that the building is not only owned by different persons but also that the cost of construction was met by all such owners jointly.

3. In so far as this case is concerned, both Exts. P10 and P11 show that it was on account of the absence of any evidence that the cost of construction was met by the owners jointly, the appeal and the revision were rejected. It is the correctness of this decision, which calls for consideration. The only case of the petitioners is that the order was passed ignoring Ext. P1 agreement between the parties. It is also stated that in Ext. P1, there was an agreement that cost of construction of the respective portion will be contributed by the respective owner. Therefore, at best Ext. P1 only shows an agreement between the parties to contribute their respective share of cost. This document does not in any manner prove that the cost of construction of the building was actually met by the persons concerned jointly. Therefore, the petitioners have not proved the requirements of Explanation 2 to S. 2(e) of the Kerala Building Tax Act, in which event only, they could have aspired for separate assessment of the ground floor and the first floor. Necessarily therefore, the assessment and Exts. P10 and P11 orders of the appellate and revisional authorities will have to be sustained and I do so.

Writ Petition fails and is dismissed.