(2017) 01 KL CK 0064

In the High Court Of Kerala

Case No : W.P.(C). No. 978 of 2017-V

Philip Philip A. APPELLANT

Vs

District Collector RESPONDENT

Date of Decision : 20-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Building Tax Act, 1975 — Section 5A

Citation : (2017) 1 KerLJ 869 : (2017) 1 KLT 578

Hon'ble Judges : Mr. K. Vinod Chandran, J.

Bench : Single Bench

Advocate : Sri. P.K. Sajeevan, Advocate, for the Petitioner; Sri V.K. Shamsudheen, Government Pleader, for the Respondents

Final Decision : Dismissed

Judgement

Mr. K. Vinod Chandran, J.—The petitioner is aggrieved with Exhibit P2 order, passed by the Assessing Authority and Exhibit P5 revisional order, passed by the District Collector. An appeal was also filed against the order at Exhibit P2, the order in which is not produced; and the revisional order, which has now affirmed the appellate order, is produced and impugned.

2. The first contention of the petitioner is that the District Collector himself has deputed an Assistant Engineer (AE) of the Public Works Department to measure the plinth area of the building. By Exhibit P6 report of the AE it is specifically pointed out that the plinth area of the building is 282.47 square meters; which includes the verandahs in front of the building in the ground floor at 39.24 square meters and in the first floor at 8.30 square meters and the portion under the staircase to be 2.14 square meters. In such circumstance, the said area, which is unusable, has to be excluded, is the argument. Reliance is placed on the decision of a Division Bench, reported as Lillykutty v. District Collector and Others [2012 (3) KHC 157] to urge that the plinth area has to be determined on the basis of Rule 8 of the Kerala Municipality Building Rules, 1999 which provide

for exclusion of 50% of floor area of open spaces. The petitioner''s contention before the District Collector, the revisional authority, was also that the Bureau of Indian Standards defines the "plinth area" to be the built-up area covered, measured at the floor level of the basement or of any storey and that for measurement of the plinth area, only 50% of the unprotected portion, of verandah and balcony, is to be taken into account.

3. This Court does not understand how the ''Method of Measurement of Plinth, Carpet and Rentable areas of Buildings'' as brought out by the Bureau of Indian Standards would be applicable to the The Kerala Building Tax Act, 1975 [for brevity "Building Tax Act"]; especially when that legislation has not adopted the method prescribed by the Bureau of Indian Standards. The District Collector has also refused to draw any inference from the method so prescribed.

4. The Building Tax Act provides for specific exemptions and exclusions; by the proviso to sub-section (5) of Section 5, wherein the plinth area of a garage or any other erection or structure appurtenant to a residential building used for the purpose of storage of firewood or for any non-residential purpose is excluded. There is no exclusion of any unusable area as contended by the petitioner. The charge of luxury tax under Section 5A is on all residential buildings having a plinth area of 278.7 square meters or more. The plinth area has to be computed as per the Building Tax Act and there is no reference made therein to the Kerala Municipality Building Rules, 1999 or to the Kerala Panchayat Raj Building Rules, 2011 or to the standards prescribed by the Bureau of Indian Standards.

5. In this context, it has also to be noticed that a Division Bench of this Court had held that the Municipality Building Rules would not be applicable for computation of plinth area for the purpose of levying luxury tax under the Building Tax Act by judgment dated 29.06.2012 in W.A. No. 1177 of 2012 [Unnikrishnan K.K. v. State of Kerala and Others]. According to the learned Counsel for the petitioner, Lillykutty by another Division Bench took a contrary stance. Lillykutty held that 50% of the terrace and 50% of the verandah are excluded under the Kerala Municipality Building Rules and the same was directed to be re-verified. This Court having read the decision, does not find any binding declaration having been rendered therein. The Division Bench merely referred to the provision in the Building Rules to calculate the floor area and the definition of plinth area in the Building Tax Act and directed a re-verification. There is no binding declaration made in Lillykutty, while in Unnikrishnan, the Division Bench categorically found that the exclusion of 50% open space in the Building Rules is for fixing the floor area; while the definition of plinth area in the Building Tax Act takes in the entire built up area.

6. In this context the definition of "plinth area" under the Building Tax Act {S 2(k)} and under the Municipality Building Rules {R 2(1)(bf)} as also the definition of "plinth" {R 2(1)(be)}, "floor" {R 2 (1)(af)} and "floor area" {R 2(1)(ag)} under the said Rules are relevant and extracted hereunder:

Building Tax Act

"S.2(k) "plinth area" means the area included in the floor of a building and where a building has more than one floor the aggregate area included in all the floors together".

Municipality Building Rules

"R.2(1)(bf) "plinth area" means area of the building at the plinth level, does not include the area of open porch (not enclosed by wall) uncovered staircase and the like".

R.2(1)(be) "plinth" means the portion of a structure between the surface of the surrounding ground and surface of the floor, first above the ground".

R.2(1)(af) "floor" means the lower surface in a storey on which one normally walks in a building. The general term ''floor'' unless otherwise specifically mentioned shall not refer to a mezzanine floor"

R.2(1)(ag) "floor area" means the built up area of a building at any floor level".

7. Floor is defined as the floor in which one can walk on and the floor area is the total built up area, which is granted certain exclusions under the Building Rules for the purposes of fixing the total FAR permissible to be constructed in a plot having a specified extent. These definitions do not at all apply to the Building Tax Act since the floor area and plinth area are not separately defined. The Municipality Building Rules, as noticed in Unnikrishnan, has a definite purpose in defining these two words separately. The definition of plinth area in the Building Rules itself provides for some exclusion; while that in the Building Tax Act takes in the entire area of the building. The definition under the Building Tax Act takes in the aggregate area included in all the floors together. The exemption under the Building Tax Act is also specifically made under the charging section, i.e., Section 5. There can be no other exemption granted especially under a taxing statute; the exemptions provided in which has to be construed strictly. The purposes of the taxing act and the building rules are quite distinct and unless specifically incorporated or referred to; the definitions and design of one cannot be imported into another. The distinction also exists in one being a statute and the other statutory rules.

8. In such circumstance, this Court does not find any reason to refer the matter to another Division Bench, since the judgment in W.A. No. 1177 of 2012 in Unnikrishnan regulates the issue. Further, later to the Division Bench decisions, in W.P.(C) No. 32190 of 2016 vide judgment dated 05.10.2016 a learned Single Judge of this Court, held that the only exemption that could be granted, in the determination of plinth area and levy of luxury tax as per the Building Tax Act, is with reference to the garage or any other erection or structure appurtenant to a residential building used for storage of firewood or for any non-residential purpose as has been specifically provided for in the proviso to sub-section (5) of Section 5. The learned Single Judge has also placed reliance on the judgment in

Unnikrishnan. In such circumstance, this Court does not find any reason to interfere with the findings of the lower authorities.

9. The writ petition would stand dismissed. No costs.

