
(1994) 12 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 1149 of 1989

P.J. Thomas

APPELLANT

Vs

Corporation of Cochin

RESPONDENT

Date of Decision : 16-12-1994

Acts Referred:

Kerala Municipal Corporation Act, 1961 — Section 108, 417

Citation : (1995) 1 KLJ 720

Hon'ble Judges : B.N. Patnaik, J

Bench : Single Bench

Advocate : Joseph Franklin, for the Appellant; P.G. Chacko, for the Respondent

Judgement

B.N. Patnaik, J.—The Original petitioner, having died during the pendency of the proceeding, his son has been impleaded as additional petitioner. The petitioner challenges the validity of the orders Exts. P2, P4 and P6 passed by the respondent Corporation. The petitioner's case is as follows:

The building in question was in occupation of Brunton & Company. The Door Nos. 1/261 to 1/270 were subsequently re-numbered as 1/292 to 1/297. Buildings Nos. 1/262 to 1/270 were demolished and due intimation was given to the respondent. But, the respondent demanded the tax in respect of Building Nos. 1/264, 1/265 and 1/266 for the periods 1982-83 and 1983-84. Building Nos. 1/261 and 1/263 are assessed together with effect from 1-4-1984 and are given Door No. 1/292.

2. The petitioner, by his letters dated 17-10-1985 (Ext. P1) and 1-4-1982 (Ext. P1 (a)) gave notice of vacancy remission in respect of the same building. When the respondent threatened to take coercive steps against him, a suit as O.S. No. 294 of 1986 was filed by him in the Munsiff's Court, Cochin. The suit was dismissed with a direction that the respondent is entitled for collecting tax dues from the petitioner deducting the amount which is hit by limitation. The petitioner preferred an appeal as A.S. No. 11 of 1989 against the said judgment

and decree. Though the petitioner has stated that it is pending, Learned Counsel for the respondent submitted that the appeal has already been dismissed, confirming the judgment and decree of the Munsiff. After the judgment was passed by the Munsiff, the respondent issued a notice dated 28-11-1988 demanding a sum of Rs. 58,470.58 towards the property tax in respect of building bearing door Nos. 1/292 to 1/297 upto the period 1988-89 first half and a further sum of Rs. 4,452.77 for the period ending 31-3-1989. Ext. P2 is that notice. Petitioner protested against it by sending a reply dated 14-12-1988 on the ground that arrears of tax from March 1982 is barred by limitation and he is not liable to pay the tax. Again the respondent by Ext. P4 notice dated 27-12-1988 made a demand of Rs. 60,388.66. The petitioner again protested against it. The petitioner's request not to recover the amount was rejected by letter dated 23-1-1989 (Ext. P6). Thereafter, the respondent seized the car of the petitioner's son. It was subsequently released on deposit of Rs. 25,000/- as per the direction of this Court. It is contended by the petitioner that for the same building, tax has been demanded twice for the same period. He was not afforded an opportunity of being heard before revising the tax. Old dilapidated dangerous buildings were demolished. Except building No. 1/297 the other buildings are no longer in existence. The respondent has not determined the tax on the basis of the annual rental value of the buildings after giving the petitioner a reasonable opportunity of being heard. The old and dilapidated buildings were purchased by the petitioner for the purpose of demolition. The previous owner of the building, viz. M/s. Brunton and Company, Cochin-1 went into liquidation. The petitioner is not a willful defaulter. The buildings were unfit for human occupation and were in a dangerous condition when purchased. There was no modification nor any structural alterations made to the buildings and the same were not let out. Hence the demand notice (Ext. P4) has to be struck down as unfair, arbitrary and illegal.

3. In the counter affidavit filed by the respondent, it is stated that when M/s. Brunton & Company, the previous owner of the buildings, went into liquidation, the claims in respect of property tax were preferred to the Official Liquidator. From the correspondence with the Official Liquidator, it revealed that the petitioner had purchased the said buildings as per Sale Deed No. 1026 of 1982. Petitioner did not intimate the respondent about the transfer of properties until a copy of the Sale Deed was produced by him on 26-9-1987. Thereafter steps were taken for mutation in the Assessment Register. As the quinquennial revision of property tax in Division No. 1 of the Corporation with effect from 1-4-1984 was taken up, the annual rental value of the above buildings except Nos. 1/264 to 266, which had since been demolished were revised with due notice to the Official Liquidator. Door Nos. 1/261 and 263 stood assessed as one unit with the new Door No. 1/292 in the said revision, while Door Nos. 1/262, 267, 268, 269 and 270 were changed as 1/293 to 1/297 with higher annual rental valued. The Official Liquidator had no objection to the said revision. The respondent's bills for the property tax so revised were duly served on him. When the fact of sale of the properties by the Official Liquidator to the petitioner and others were learnt, long

after the said revision, the respondent sent a notice to the petitioner to pay the tax arrears. It was only in 1987 that the petitioner gave to the respondent notice of transfer of the properties as required u/s 108 of the Kerala Municipal Corporations Act, 1961 (hereinafter referred to as the Act). As a transferee, the petitioner was liable to pay the entire tax arrears and as such, demand notices Exts. P2, P4 and P6 were sent to him. There was no demand of tax for the same period. The allegation that the petitioner was not afforded any opportunity of being heard before the revision of tax in 1984 is not tenable. He never applied for vacancy remission as required by the provisions of the Act, nor did he attempt to pay any tax arrears. The claim is not barred by limitation. The petitioner submitted an application dated 23-2-1989 (Ext. R1) to the Standing Committee (Taxation & Finance) of the Corporation, praying for redressal of his grievances, during the pendency of the original petition. The Committee did not consider the same on merits in view of the death of the applicant and the pendency of the original petition. After receiving Exts. P2, P4 and P6, the petitioner did not take any steps. The application dated 23-2-1989 submitted by the petitioner to the Standing Committee would show that the allegation of the petitioner that he had sent intimations earlier, is not true.

4. Learned Counsel for the petitioner contends that the petitioner is ready to pay the amount less the amount barred by limitation till the date of demolition and no notice having been served on the petitioner before revision of the assessment, the respondent has violated the principles of natural justice and is therefore not entitled to recover tax at the enhanced rate. Learned Counsel for the petitioner relies on section 417 of the Act as it stood then, and submits that the claim of tax prior to the period of three years pending the notice being barred by limitation u/s 417 of the Act, the demand made for the periods 1982-83 to 1985-86 is illegal. Section 417 of the Act lays down as follows:-

Limitation for recovery of dues, - No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the corporation under this Act after the expiration of a period of three years from the date on which distraint might first have, been made, a suit might first have been instituted or prosecution might first have been commenced, as the case may be, in respect of such sum.

5. It is contended by the Learned Counsel for the respondent that the period of limitation as contemplated in section 417 of the Act is not applicable to the claim of property tax in as much as the property tax is a first charge upon the building belonging to the person liable to pay such tax u/s 105 of the Act. Hence Article 62 of the Limitation Act would apply to the case and the period of limitation for recovery of arrears is 12 years. So, the demand is not barred by limitation. Section 105 of the Act lays down as follows:-

Property tax, a first charge on property and movables-The property tax on buildings and lands shall, subject to the prior payment of the land revenue, if any, due to the Government thereon, be a first charge upon the said buildings or

lands and upon the movable property, if any, found within or upon such buildings or lands and belonging to the person liable to such tax.

6. The question for consideration is whether the period of limitation for recovery of property tax is to be reckoned as 3 years. Chapter V of part III and Part II of Schedule II of the Act deal with taxation and finance exclusively. Property tax having been made a charge on the property and since there is specific provision with regard to the demand and payment of the same it cannot be equated with any other claim of money. The method of assessment and recovery of property tax is dealt with separately from the subject matter dealing with recovery of any other sum mentioned under the heading "Payment of Compensation etc. by and to the Corporation" in Chapter XVI of part VI of the Act containing section 417. Section 105 of the Act would therefore lose its significance if demand of property tax is treated on par with any other claim of money simpliciter. On a harmonious construction of both the sections the conclusion is irresistible that section 105 is intended to be taken out of the purview of section 417 of the Act. Section 417 of the Act therefore contemplates recovery of money which is other than property tax.

7. Article 62 of the Limitation Act, 1963 lays down that the period of limitation is twelve years to enforce payment of money secured by a mortgage or otherwise charged upon immovable property and the time from which period begins to run is when the money sued for becomes due. Since property tax is charged on the property to which it relates, the period of limitation for recovery of the same is 12 years under Article 62 of the Limitation Act, 1963. This view is supported by the decisions in *Shidrao Narayanrao Gumaste Patil Vs. The Municipality of Athni*, *Lakhmi Chand Vs. Municipal Corporation of Delhi*, and *Bimal Kumar v. Culcutta Municipality* (AIR 1978 Culcutta 420) In those decisions it has been laid down that where the property tax is a first charge on the building or land on which it is levied, period of limitation for recovery of the same is 12 years, under Article 132 of the Limitation Act, 1908, corresponding to section 62 of the 1963 Act. Hence the contention that the claim of property tax for the period beyond three years is barred by limitation u/s 417 of the Act cannot be sustained. In this case, the claim having been made within 12 years from the date when it became due, it is not barred by limitation.

8. Learned Counsel for the petitioner relying on the decision *K.J. Joseph & Others v. Corporation of Cochin* (1987 (2) KLT 427) submits that the petitioner having not been given an opportunity of being heard at the time of quinquennial revision of property tax and since no reason has been stated as to the basis on which the said revision of tax was made in respect of the house in question, the petitioner is not liable to pay tax at the revised rate. Learned Counsel for the respondent has contended that since intimation of transfer of property was not sent to the Corporation, when the revision was made, there was no scope to issue any such notice as required under the law before the revision of the tax. The quinquennial revision of taxes was undertaken in 1984. By then there was nothing in the

records of the Corporation showing that the property was purchased by the petitioner in the year 1982. The question that arises for consideration, therefore, is whether for want of notice to show cause as to why revision of tax shall not be made, the revised tax assessed by the corporation is liable to be struck down.

9. Sub-section (1) and (4) of section 108 of the Act reads as follows:-

Obligation of transfer and transferee to give notice of transfer- (1) whenever the title of any person primarily liable to the payment of the property tax on any premises to or over such premises is transferred the person whose title is transferred and the person to whom the same is transferred shall, within three months after the execution of the instrument of transfer or after its registration if it be registered or after the transfer is effected, if no instrument be effected, give notice of such transfer to the commissioner."

(2)...

(3)...

(4) Every person who makes a transfer as aforesaid without giving such notice to the commissioner shall, in addition to any other liability which he may incur through such neglect; continue liable for the payment of the property tax assessed on the premises transferred until he gives notice or until the transfer shall have been recorded in the municipal registers, but nothing in this section shall be held to affect-(a) the liability of the transferee for the payment of the said tax, or

(b) the prior claim of the corporation u/s 105.

10. The aforesaid provisions oblige the transferee to give notice of the transfer of the property to the commissioner within three months after the execution of the instrument of transfer. Although the petitioner has claimed that by his letter dated 1-4-1982 (Ext. P1) he intimated the Deputy Commissioner, Corporation of Cochin about the purchase of the house, yet the respondent states that no such letter was ever received. It appears that until the suit was filed in the year 1986 in the Munsiff's Court and until the letter Ext. R1 dated 23-2-1989 was received, there was no official communication about the purchase of the house by the petitioner. The petitioner has stated in Ext. R1 letter addressed to the Standing Committee of the Corporation that the purchase the house in question in 1982 and after the company vacated the premises he demolished the building. The matter was communicated to the Corporation, but the communication missed somehow or other. Thus it is admitted that the letter in question by which he intimated about the purchase of the house in the year 1982 (Ext. P1 (a) had missed and it did not reach the Corporation. It is therefore legitimate to infer that the respondent did not have any information until the year 1986 that the property was purchased by the petitioner in March 1982.

11. But the respondent, however, has failed to show that in fact such a notice was sent to the Company or the Official Liquidator. If, in fact such a notice had

been sent either to the Company or to the Official Liquidator, they would have intimated the respondent-Corporation about the transfer of the building. In the absence of any such proof that notice was sent either to the previous owner or to the Official Liquidator, it is reasonable to believe that no show cause notice was sent to the ex-owner of the property either.

12. The petitioner in his petition has challenged the basis of the annual rental value of the building on which the respondent has assessed the tax. It is laid down in K.J. Joseph's Case that under the scheme of the Act and the Taxation Rules thereunder in revising the assessment, the authority has to determine the tax on the basis of the annual rental value of the building after giving the party concerned a reasonable opportunity of being heard. The assessment should be reasonable and objective based on relevant materials. The revised order assessment being an appealable one shall be supported by reasons. Where substantial objections have been raised by the party, the same have to be considered and the reasons thereof have to be stated and the detailed particulars relating to the assessment in such cases are also to be recorded. It is true that the petitioner submitted Ext. R1 application before the Standing Committee of the Corporation, after the O.P. was filed. The statement of the respondent that show cause notice was issued to the ex-owner of the property or the Official Liquidator is not free from doubt. It is not stated in the counter affidavit as to what was the annual rental value of the building on the basis of which a revised assessment of tax was made, in reply to the petitioner's averment that the same was done arbitrarily. In these circumstances, I am of the opinion that it is incumbent on the part of the respondent to consider Ext. R1 (a) application dated 23-2-1989, according to law, after giving an opportunity to the present petitioner of being heard. It would be unfair to make any demand of revised tax without informing the present petitioner as to the reasons of making such a revised assessment.

13. I therefore direct the respondent to consider Ext. R1 petition afresh and pass appropriate orders with reasons, after affording the petitioner an opportunity of being heard. In view of my finding that the claim is not barred by limitation, it is not open to the petitioner to take such a plea any more.

With the above observation, the writ petition is disposed of.