
(2006) 03 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 186 of 2006

P.P. Varghese

APPELLANT

Vs

Tahsildar and Others

RESPONDENT

Date of Decision : 09-03-2006

Acts Referred:

Kerala Building Tax Act, 1975 — Section 2, 7, 7(1), 7(3), 8

Citation : (2006) 1 KLJ 749

Hon'ble Judges : K.T. Sankaran, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Antony Dominic, E.K. Nandakumar and A.K. Jayasankar Nambiar, for the Appellant; Raju Joseph, Government Pleader for Taxes, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Original petition was preferred by the Appellant herein seeking a writ of certiorari to quash Ext.P-5 order of assessment dated 18-7-1996 passed under the Kerala building Tax Act, 1975 levying building tax of Rs. 2,13,473 on the Petitioner in respect of his building No. KP-VI/279 A, B, C and D. The building was constructed on a land in R.S. No. 178/1 and 178/17 in Block No. 20 of Kalpetta Village, title of which stands in the name of the Petitioner.

2. Revenue Inspector, Kalpetta by reference C4.3/91 dated 25-6-1996 had furnished a pro forma report in respect of the building and also submitted a return in Form II giving the measurement of the building as 2,070.61 M2. Case was then posted for hearing and notice was given to the Petitioner. Petitioner appeared on 17-7-1996 and objected to the same. Following are the objections raised by the Petitioner.

(i) The building in question belongs to four different persons, namely:

(1) P.V. Poullose and George, (2) P.V. Issac, (3) P.P. Varghese and (4) P.V. Kuriakose.

- (ii) The cost of construction of the building is met by four different persons.
- (iii) Each portion of the building has to be assessed separately.
- (iv) The land wherein the building is constructed belongs to five persons jointly.
- (v) Each of the persons mentioned against paragraph 1 are paying separate building tax.

Considering the above-mentioned report as well as the objections raised by the Petitioner, Ext. P-5 assessment order was passed by the Tahsildar on 18-7-1996. Aggrieved by the order passed by the Tahsildar, Petitioner took up the matter in appeal before the Assistant Collector. Appeal was rejected holding that the Petitioner had not adduced any evidence to show that the land belongs to others other than the Petitioner and that he had not adduced any evidence to show that the building was constructed with the funds advanced by rest of three persons. Agreement executed between the Petitioner and others was also not accepted holding that it was not a registered document. Appeal was therefore rejected, vide order dated 4-12-1996. Aggrieved by the said order, Petitioner preferred revision petition before the District Collector, Wynad who by Ext. P-10 order dated 19-11-1997 dismissed the revision against which writ petition was preferred. Learned Single Judge found no infirmity in the orders passed by the authorities below and dismissed the writ petition against which this appeal has been preferred.

3. Counsel appearing for the Petitioner submitted that the building is owned by four different and distinct persons and the cost of constructions was also met by them jointly. Counsel further submitted that assessment should have been made separately on each of the owner as envisaged in Explanation 2 to Section 2(e) of the Kerala Building Tax Act. Referring to Section 2(k) of the Act, counsel submitted that in the case of building referred to in clause (e) plinth area will have to be calculated separately. Reference was also made to the Bench decision of this Court in Kurian George v. Tahsildar 1995 (2) KLT 457 and submitted that when a building is constructed, consisting of separate and distinct apartments or flats, jointly by a group of persons, each flat or apartment shall be treated as separate building. Counsel also made reference to the decision of a Division Bench of this Court in Lissy v. Tahsildar 2000 (3) KLT 497 and submitted that Section 2(e) does not make any difference between commercial or residential building and if part of the building can be used with separate door and with independent access and owned separately, it can be assessed separately. Counsel submitted that the whole building was divided into four buildings and each one is separately owned by different persons and was to be assessed individually. Counsel also submitted that statutory definition of "owner" for the purpose of building tax has also been satisfied in this case since all the four persons are owners of separate portions of the building.

4. Learned Government Pleader on the other hand contended that the Petitioner has not adduced any materials before the authorities to show that the land is

owned by different persons and the cost of construction was met by them. Counsel submitted that the agreement executed between the Petitioner and the Corporation is not a registered one and it is created only to suit their convenience. Counsel submitted that no conclusive evidence has been adduced by the Petitioner to substantiate the contention that cost of construction of the building was met by them jointly. Reference was made to Section 2(e) and Explanation II thereof of the Act.

5. The owner of every building, construction of which is completed after the appointed day has to furnish to the assessing authority return in the prescribed form within the specified period along with the copy of the plan approved by the local authority or such other authorities as may be specified by the Government in this behalf and verified in the prescribed manner and containing such particulars as may be prescribed. Sub-section (3) of Section 7 states that if the assessing authority is of opinion that any person is liable to furnish a return under Sub-section (1) then, notwithstanding anything contained in that sub-section, it may serve a notice upon that person requiring him to furnish within such period, not being less than thirty days from the date of service of notice, as may be specified in the notice a return in the prescribed form. If the assessing authority is satisfied that a return made by an owner u/s 7 or Section 8 is correct and complete, it shall assess the amount payable by him as building tax on the basis of the return. If the assessing authority is not so satisfied, it shall serve a notice on the Assessee either to attend in person at its office on a date to be specified in the notice or to produce or cause to be produced on that date any evidence on which the Assessee may rely in support of his return. The assessing authority, after considering such evidence as the Assessee may produce and such other evidence as it may require on any specified point and after conducting such inquiries or inspection as it may consider necessary, shall by order in writing, assess the amount payable by him as building tax. The assessing authority in the instant case called for a report from the Revenue Inspector. Based on the said report the claim made by the Petitioner was rejected holding that the Petitioner has not produced any document or evidence to show that the cost of construction of the building was met by all the five owners separately. Section 2(i) defines the word "owner" as follows:

"owner" includes a person who for the time-being is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person or who should so receive the rent or be entitled to receive it if the building or part thereof were let to a tenant.

Section 2(e) defines the expression "building" which reads as follows:

"building" means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main

structure.

Explanation 2 to Section 2(e) which is also relevant for the purpose of this case, reads as follows:

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:

Section 7 provides that the owner of every building the construction of which is completed, or to which major repair or improvement is made on or after the appointed day shall furnish to the assessing authority a return in the prescribed form within the prescribed period along with a copy of the plan approved by the local authority and thereafter assessment has to be made by the assessing authority u/s 9 of the Act. Section 2(i) defines the expression "owner" as a person who is entitled to receive the rent of any building, whether on his own account or on account of himself and others or as an agent. Explanation 2 of Section 2(e) states that 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.

6. Petitioner in this case is admittedly the owner of the property on which the building was constructed. No evidence was adduced by the Petitioner to show the ownership of the land in which building was constructed. Contention was however raised relying on Explanation 2 to Section 2(e) stating that even though all the four Respondents are not co-owners of the land in question all of them have jointly constructed the building and have to be assessed separately. We find it difficult to accept the contention. In a case where there is no evidence to show that the land on which building was constructed belongs to different persons they have necessarily to show that cost of construction was met by different persons so as to treat a part of the building or flat of the building as one unit. No evidence has been adduced in this case to show that cost of the construction was met by all the persons. Petitioner tried to build up a case based on a receipt issued by the Kalpetta Panchayat showing that tax has been paid on behalf of all the four persons. Receipt of tax issued by the Panchayat is not a conclusive evidence to show that the land and building are owned by four different persons and that the cost of construction was met by them jointly. No evidence was adduced by the Petitioner to show that the title over the land on which the building was constructed. No evidence was adduced to show that separate funds were raised by the partners for the construction of the building. Permit for the construction of the building was also issued by the Kalpetta Panchayat in the year 1983-84 in favour of Varghese. If the building in question was to be treated as separate buildings and owned by four different persons, permits would have been issued in favour of four different persons. We therefore find no illegality in assessing the building as one unit and levying building tax accordingly.

7. We are of the view Petitioner has failed to establish that the building is owned by four different persons and cost of construction of the building was met by four persons so as to treat, the building separately and assess the persons accordingly. We therefore find no merit in this appeal. The same would stand dismissed.