(2014) 12 KL CK 0109

In the High Court Of Kerala

Case No : WP(C). No. 37570 of 2009 (M)

P.V. Thresia APPELLANT

Vs

Tahsildar RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

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

Citation : (2014) 12 KL CK 0109

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : S. Ananthakrishnan, N.K. Subramanian and P.G. Jerome, Advocate for the Appellant; K.T. Lilly, Government Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.

1. The petitioner is the owner of 7.950 cents of land in Elamkulam village. In 1987, the petitioner had put up a house on the said property. Thereafter, with a view to construct the 1st and 2nd floors to the said building, the petitioner applied before the local authority for permission to effect the said construction. The permission sought for was also granted by the local authority. Since the petitioner did not have the means to go ahead with the construction, she settled 1/6 of the undivided interest in her property in favour of her brother''s children, who were 4 in number, and also granted them the right to construct separate portions on the 1st and 2nd floor of the said building. It is stated that, consequent to the transfer of the undivided interest in the land as also the grant of the right to make constructions, the said persons constructed the individual apartments with their own funds. In the building tax assessment with respect to the additional construction effected, the entire construction was treated as forming part of the building, and it was assessed to building tax and luxury tax by treating the building as a single unit and not as separate apartments as requested by the petitioner. Exts.P7 and P8 are the assessment orders passed, levying building tax and luxury tax on the building. Against the said orders, the

petitioner preferred an appeal before the 2nd respondent which came to be rejected by Ext. P9 order. Thereafter, the petitioner preferred a revision before the 3rd respondent authority which also came to be rejected by Ext. P10 order. Both in Exts.P9 and P10 orders, the appeal and revision preferred by the petitioner has been rejected on the ground that the petitioner failed to produce documentary evidence to substantiate her claim with regard to the requirement of separate assessments of the individual apartments in the building. In Ext. P10 order, although the 3rd respondent refers to the various documents that were produced by the petitioner in support of her contention with regard to the separate assessments of the individual apartments, the request for separate assessments was rejected on the ground that the petitioner had not produced evidence to show that the four persons had an agreement between themselves for the construction of the separate portions in the building and, further, there was no document to suggest that they had effected contributions for the construction of the building. In the writ petition, Exts.P7, P8, P9 and P10 are impugned, inter alia, on the ground that the assessment of the individual apartments, owned by the various persons who obtained interest over the land from the petitioner, ought to have been done based on the proportion in which they obtained interest in the land from the petitioner, and in which proportion they also obtained rights, in the building that was subsequently constructed by them.

2. A counter affidavit has been filed on behalf of the 1st respondent wherein the sequence of events leading to the passing of the various orders that are impugned is narrated. It is also pointed out that the petitioner had not produced any document showing the contribution of the various persons to the costs of the additional constructions effected to the building and that it was under those circumstances that the authorities concerned were constrained to assess the building as a single unit contrary to the claim of the petitioner.

3. I have heard Sri. S. Ananthakrishnan, the learned counsel for the petitioner and Smt. K.T. Lilly, the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that this is a case where the scheme of the Building Tax Act and, in particular, the provisions of Explanation 2 to Section 2(e) of the said Act have not been appreciated by the authorities, who were called upon to decide on the manner of assessment of the building to building tax and luxury tax. A perusal of the provisions of Explanation 2 to Section 2(e) would indicate that as per the Scheme of the Act, the levy of tax is on a building that is constructed after the cut-off date specified in the Act. While under normal circumstances, the building as a whole would have to be treated as a single unit for the purposes of tax, an exception is carved out in cases covered by Explanation 2 to Section 2(e) of the Act. As per the said explanation, where the 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 apartments or flats shall be deemed to be a separate building. It is apparent from a reading of the Explanation, therefore, that for the building to be assessed as separate units, it must be shown that:

"1. The building consists of different apartments or flats.

2. The said apartments or flats are owned by different persons.

3. That the cost of construction of the building was met by all such persons jointly."

It was incumbent upon the respondent therefore to consider whether the ownership in the apartments that were constructed vested in different persons and the said persons had contributed to the cost of construction of the building. In order to arrive at a finding on these aspects, the respondent had to consider documents that would suggest an ownership of the various persons in the different portions of the building that are stated to the have been assigned in their favour. The proportionate share of the undivided interest in the land would be an indicator of the rights possessed by them in the building. That apart, the separate door numbers, separate payments of property tax, separate occupancy certificates issued to them etc., would all suggest an ownership in the respective portions of the building that are occupied by them. Ultimately, there will be no single document in such cases which would clearly point to a title, over the respective portions of the building, in each of the individual owners. The existence of a title, over the portion stated to be owned by each of the persons, is something that would have to be inferred from the documents available. Similarly as regards the aspect of costs of construction, it is again something that would have to be inferred from documents such as construction agreements, documents showing possession of funds, details of bank statements, receipts from builder etc., which would indicate that the person, claiming to be the owner of the building, had also contributed to the cost of construction of that portion of the building over which he claims ownership. The findings entered into by the assessing authority, as well as the appellate authority, cannot be a mechanical one but must be one that keeps in mind the scheme of the Building Tax Act as noted above, and also takes note of the decisions of this court in Nelson Rozario Vs. State of Kerala, , Varghese Vs. State of Kerala, , Natarajan G. and Others Vs. State of Kerala and Others, , Pavan Kumar P. Vs. State of Kerala and Others, and The Tahsildar Vs. Soman Peter, . Insofar as I do not find this exercise having been done in any of the orders impugned in the writ petition, I am inclined to quash Exts.P7, P8 and P9 and P10 orders and direct the 1st respondent to consider the matter afresh in the light of the documents produced by the petitioners, after affording the petitioner an opportunity of being heard in the matter. The 1st respondent shall pass fresh orders within a period of three months from the date of receipt of a copy of this judgment and in the order to be passed, he shall specifically advert to the documents produced by the petitioner, and state his reasons for accepting the said documents or rejecting the same, and then pass a reasoned order in the matter.

The writ petition is disposed as above.

