
(2002) 05 KL CK 0033
In the High Court Of Kerala
Case No : W.A. No. 1093 of 1997 (E)

Rajan	Vs	APPELLANT
District Collector		RESPONDENT

Date of Decision : 22-05-2002

Acts Referred:

Kerala Building Tax Act, 1975 — Section 15, 7

Citation : (2002) 05 KL CK 0033

Hon'ble Judges : B.N. Srikrishna, C.J;G. Sivarajan, J

Bench : Division Bench

Advocate : V. Giri, for the Appellant; C.K. Abdul Rahim, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

B.N. Srikrishna, C.J.—We have perused the record and the judgment of the learned Single Judge under appeal and heard the learned counsel.

2. The short question which arises in this case is, whether u/s 15 of the Kerala Building Tax Act (hereinafter referred to as "the Act") the Tahsildar can carry out wholesale revision of the assessment already made.

3. The appellant is the owner of a building which is partly constructed and partly modified. The appellant filed a return under the Act. An inspection was conducted by the Village Officer, Kuthanur who submitted a report based upon which the assessment order was passed by fixing the capital value of the building at Rs. 2 lakhs and determining the tax payable at Rs. 3250/-. A consequent demand notice was issued to the appellant on 30.7.1984, vide Ext. P1. The amount was to be paid in four equal instalments. Thereafter, the appellant received Ext. P2 notice dated 15.12.1988 in which the Tahsildar, Alathur alleged that the assessment ordered has been subsequently found to be incorrect and that it requires revision u/s 15 of the Act. The appellant was called upon to file his objections and also to attend a hearing. By Ext. P3 the appellant filed his

objections thereto and attended the hearing. By the order made on 9.1.1989 (Ext. P4), the Tahsildar, Alathur refixed the capital value of the building at Rs. 3,39,912/- and consequently reworked the total amount of tax payable as Rs. 7044/-. Being aggrieved thereby the appellant challenged the order of the Tahsildar by his O.P. No. 575 of 1991. The Original Petition has been dismissed by the learned Single Judge holding that in the objection filed on 26.12.1988 the appellant had not disclosed additional construction of about 1556 sq.ft. As a matter of fact, at the time of first assessment, the plinth area was 2661 sq.ft. but as per the report of the Village Officer, the actual plinth area on the ground floor is 1700 sq.ft. and of the first floor 961 sq.ft. When the building was inspected on the basis of the audit objections on 21.10.1986 it was found that the total plinth area was 4217 sq.ft., which meant that the appellant had added 1556 sq.ft. area to the existing building by making additional construction. In this view of the matter, the learned Single Judge found no reason to interfere with the order made by the Tahsildar and dismissed the Original Petition. Being aggrieved, the appellant has filed this appeal.

4. Learned counsel for the appellant does not dispute that additional construction was made and an additional area of 1556 sq.ft. was added to the building. His contention is that, in such a situation, proceeding u/s 15 of the Act could not have been taken. The authorities had to proceed u/s 7(d) of the Act to reassess the building on the footing that there is additional construction. This contention appears to be correct. It appears to be a situation where the right thing is done the wrong way. It is now settled law that the jurisdiction of the Tahsildar u/s 15 of the Act is extremely limited and does not extend beyond carrying out rectification of a bona fide mistake. If reassessment has to be done, it has to be done u/s 7 of the Act.

5. In the result, we set aside the judgment under appeal, the order of the Tahsildar at Ext. P4, and the order at Ext. P5 made in revision by the District Collector following the order of the Tahsildar at Ext. P4, and the notice u/s 15 of the Act (Ext. P2) with liberty to the respondents to proceed u/s 7 of the Kerala Building Tax Act and to re-determine the capital value of the building by reassessment and also to redetermine the tax payable therefor.

Writ Appeal is allowed as above.