(2014) 09 KL CK 0068

In the High Court Of Kerala

Case No : W.P. (C). No. 20931 of 2012 (n)

Rajesh Prabhu APPELLANT

Vs

Tahsildar RESPONDENT

Date of Decision : 16-09-2014

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

Citation : (2014) 09 KL CK 0068

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : R. Lakshmi Narayan and R. Ranjini, Advocate for the Appellant; Sebastian Champappilly, Government Pleader, Advocate for the Respondent

Judgement

P.R. Ramachandra Menon, J.—Ext. P1 assessment order passed by the 1st respondent, as confirmed by the 2nd respondent by way of Ext. P12 order passed in appeal, forms the subject matter of challenge in this writ petition.

2. The father of the petitioner was the owner of the property having an extent of 56.330 cents of land in Sy. No. 659/6, 7, 11 and 1185/2 of Ernakulam Village. During his life time, he entered in to an agreement with M/s. Yasoram Construction Company for construction of a multistoried building therein, agreeing to have apportionment of the building to an extent of 37% to be allotted to the land owner and balance 63% to the builder. It is stated that the original owner of the property is no more, who had executed a ''Will'' so as to obtain returns from the builder in the proportion already set forth as desired by him. The construction is stated as completed by the builder and by virtue of the terms of the Will, the petitioner is entitled to have 11 Flats (residential occupancy) and a further space of nearly 310.20 Sq. mtr. of non residential space. Two other Flats have been allotted, one in the name of the mother of the petitioner and the other in the name of his sister. The grievance of the petitioner is mainly with regard to the clubbing of different apartments allotted to him and fixing the tax liability treating it as a single building, denying the benefit of

explanation (II) to Section 2(e) of Kerala Building Tax Act. It is stated that the building allotted to the mother of the petitioner has been assessed separately and that the different Flats constructed by the builder and sold to the prospective customers have also been assessed separately, whereas an arbitrary and discriminatory stand has been taken in the case of the petitioner and hence the challenge.

3. The first respondent has filed a counter affidavit seeking to sustain the course and events, also producing some documents such as the Building Permit, Occupancy Certificate and such other documents on different dates as Exts. R1(a) to R1(d). It is seen from the pleadings and proceedings that the petitioner had approached this Court earlier, challenging Ext. P1 assessment order and Exts. P2 to P7 demand notices by filing W.P. (C). No. 8687 of 2008, which was disposed of as per Ext. P9 judgment dated 28.3.2008, relegating the petitioner to avail the statutory remedy before the second respondent, after satisfying 50% of the total demand. The petitioner satisfied the said requirement and filed Ext. P10 and similar appeals. During the pendency of the proceedings, the petitioner submitted Ext. P11 notes of argument as well. Nothing was heard for quite long time and after four years, Ext. P12 order was passed by the 2nd respondent on 21.07.2012, holding that the petitioner had not turned up for hearing on 18.7.2008, 29.08.2008 and on 24.10.2008, thus rejecting the appeals without entering into the merits of the case. This made the petitioner to approach this Court by filing this writ petition.

4. The learned counsel for the petitioner submits that the issue is squarely covered in favour of the petitioner, by virtue of the judgment rendered by a Division Bench of this Court reported in Pavan Kumar P. Vs. State of Kerala and Others, .

5. The learned Special Government Pleader appearing for the respondents submits that there is some factual difference with regard to the case involved herein, in so far as no proper agreement was produced to have the issue considered for separate assessment. Reference is also made to the discrepancies with regard to the different dates of the documents produced as Exts. R1(a) to R1(d), also pointing out that the father of the petitioner took his last breath on 18.9.1995, while the ''Will'' was stated as executed just on the previous day. Ext. R1(a) Building Permit was issued subsequently on ''25.06.1996'' in the name of the deceased, followed by such other documents regarding the Partial Occupancy Certificate and Full Occupancy Certificates. Ext. R1(c), which is a copy of the sale deed, is also produced.

6. The version of the learned Government Pleader is sought to be opposed by the learned counsel for the petitioner by making a reference to Ext. P1 order itself (passed by the 1st respondent), wherein reference is made to the agreement produced between the petitioner, his sister and mother on one side and the builder by name M/s. Yasoram Construction Company on the other side, referring to the proportion of the built up area allowable to both the sides as mentioned

above. It is also pointed out that the petitioner had appeared before the appellate authority and had submitted Ext. P11 argument notes which was very much available on files, when Ext. P12 order was passed. The petitioner was let known that he will be intimated in the due course and that it is without any regard to the actual facts and figures, that an observation was made by the appellate authority in Ext. P12, that the petitioner had not appeared for the hearing scheduled ''four years ago'', leading to Ext. P12 order, simply dismissing the appeal.

7. After hearing both the sides, this Court finds that the matter requires to be reconsidered by the 2nd respondent, more so in the light of the law declared by this Court as per the decision cited supra. Accordingly, Ext. P12 is set aside and the second respondent is directed to reconsider the matter with reference to the actual facts and figures and also the law in Pavan Kumar P. Vs. State of Kerala and Others, , which shall be done after giving an opportunity of hearing to the petitioner and also considering the materials on record before the 1st respondent. The proceedings as above shall be finalized at the earliest, at any rate within ''three months'' from the date of receipt of a copy of this judgment.

It will be open for the second respondent to call for further materials in accordance with the relevant provisions of law, with regard to the claim of the petitioner under explanation (II) to Section 2(e) of the Kerala Building Tax Act, 1975. The writ petition is disposed of.