

(2004) 10 KL CK 0036
In the High Court Of Kerala
Case No : O.P. No. 32656 of 1999

Rasheed

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 28-10-2004

Acts Referred:

Kerala Building Tax Act, 1975 — Section 2

Citation : (2004) 3 KLT 945

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : Siby Mathew, A.A. Mohammed Nazir, Philip J. Vetticattu and V. Laxmi, for the Appellant; Julian Xavier, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.N. Ramachandran Nair, J.—The petitioners are challenging Ext.P5 series of demands and Ext.P6 detailed order of assessment demanding building tax in respect of a building from four joint owners. Even though statutory appeal is provided, the petitioners did not choose to file appeal but contested the assessment by filing O.P. in 1999. The O.P. having been admitted 5 years back, I do not think it is fair on the part of this Court to reject the case for pursuing statutory remedy. Therefore I proceed to decide the case on merits. I heard counsel for the petitioners and the Government Pleader and have gone through the impugned order Ext.P6.

2. The contention raised by the petitioners is that the petitioners shared the cost of construction of the building and the buildings are to be assessed as separate units in terms of Explanation 2 to Section 2(e) of the Kerala Building Tax Act which is as follows:

"S.2(e) "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 1:--.....

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".

Explanation 2 providing for separate assessments based on cost of construction shared by different owners arise when the building consists of different apartments whether commercial or residential. The petitioners have no case that there are four buildings to be assessed separately even though according to them, the Panchayat has issued separate assessments. The Tahsildar has conducted inspection of the building and in Ext.P6 order he has entered clearcut finding that the building is a single unit and is let out to a Bank and it has no walls partitioning the different portions separately. The area or the portion of building set apart for each owner is not mentioned in any record and factually there is only one building. It is pertinent to note that the land and building originally belonged to petitioners' father one Mr. Kasim Rawther who after receipt of notice u/s 7(1) of the Kerala Building Tax Act agreed to furnish returns and remit the tax. However the finding of the Tahsildar is that after receipt of the notice he transferred the property in the name of his sons assigning 375 sq. metres of constructed building to each and every one of them who are the petitioners. Even though counsel for the petitioners contended that at the time of completion of building, the buildings are assigned to the petitioners who are sons of the original owner. I do not think such transfer has any consequence. The only question to be considered is whether the building is a single unit irrespective of whether it is owned by one owner or different owners. The clearcut finding is that there is only one building without any separation and the said building is used by a Bank under lease from the petitioners. Therefore, in the absence of construction of separate building units under separate ownership, there is no scope for applying Explanation 2 to Section 2(e). In other words, even if construction cost of a building is met by different owners, there cannot be different assessments unless the building constructed consists of different flats or apartments under different ownership. It is immaterial whether separate assessments are made by local authority or not or whether such assessments are tenable or not. Such assessments are not binding on the tax authorities under the Kerala Building Tax Act. So long as the Building Tax Act provides for only one assessment for a single building whether it be owned by a single owner or several persons jointly, there is no scope for interference. Ext.P6 is therefore sustained and O.P. is dismissed.