(2014) 12 KL CK 0074

In the High Court Of Kerala

Case No : WP(C). No. 31445 of 2007 (R)

Rosamma Thomas APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:
Kerala Building Tax Act, 1975 — Section 5A

Citation : (2014) 12 KL CK 0074

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

Bench : Division Bench

Advocate : T. Ravikumar, Advocate for the Appellant; Jose Adiyodi, Govt. Pleader, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—The petitioner had put up a residential building on property belonging to her. During the year 1996, she proposed to put up additional construction on the first floor of the said building and accordingly, she approached the Local Authority for a building permit which was granted to her and was valid till 16-10-1999. It is submitted that, thereafter, the petitioner completed the additional construction of the first floor in 1998 and also paid property tax in respect of the additional constructions for the year 1998-1999 as evidenced by Exts.P7, P7(a) and P8 documents produced by her. By Ext.P9 application dated 4-1-1999, she had also applied for the issuance of an occupancy certificate. It is the case of the petitioner that the said documents would clearly establish that the petitioner had completed the construction of the first floor of the building by 1998 and, therefore, the levy of luxury tax under Sec. 5A of the Act, which was applicable only to residential buildings having a plinth area of 278.7 Sq. metres and completed on or after 1-4-1999, would not be attracted to the building constructed by her. In the Writ Petition, the petitioner impugns Ext.P3 assessment order and Ext.P5 order passed by the 2nd respondent rejecting the revision petition preferred by the petitioner against Ext.P3 order. In Ext.P5 order, the 2nd respondent finds that the production of receipts to show that the property tax had been paid for the year 1998-1999 would not suffice to establish that the construction of the building was completed in 1998.

2. A counter affidavit has been filed on behalf of the respondents wherein it is stated that the 3rd respondent had issued a statutory notice to the petitioner for hearing in connection with the building tax. During the course of the hearing in 2000, the petitioner had conceded that the construction of the building was not yet completed. It is relying on the statement of the petitioner that the construction of the building was not completed even in the year 2000, that the 2nd respondent proceeded to reject the revision petition preferred by the petitioner.

3. I heard Sri. T. Ravikumar, the learned counsel for the petitioner as well as Smt. Lilly, the learned Government Pleader for respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that the assessment to luxury tax, of the petitioner''s building, by Ext.P3 order, and the rejection of the revision petition by the 2nd respondent by Ext.P5 order, are premised on the finding that the construction of the building was completed only after 1-4-1999. While the petitioner produced Exts.P7, P7(a), P8 and P9 documents to substantiate that the construction of the building was completed by 1998, the 2nd respondent while rejecting the revision found that the said documents by themselves do not clearly establish that the construction of the building was completed before 1-4-1999. The 2nd respondent also relied on the admission of the petitioner that the construction of the building was not over, as on the date of hearing, in the year 2000. In that view of the matter, in the absence of any evidence to establish that the construction of the building was completed prior to the cut off date of 1-4-1999 stipulated in Sec. 5A of the Kerala Building Tax Act, I cannot find fault with Ext.P3 assessment order passed by the 3rd respondent, and Ext.P5 order passed by the 2nd respondent in revision. Accordingly, the writ petition, in its challenge against the said orders, fails and is accordingly dismissed.

In Ext.P3 assessment order, the levy of luxury tax is for the assessment years 2000-2001 to 2002-2003. Ext.P5 order of the 2nd respondent also pertains to the said assessment years. In so far as I have not interfered with Exts.P3 and P5 orders in this Writ Petition, the assessment made for the said years against the petitioner will stand concluded. I make it clear, however, that if the petitioner approaches the respondents with an application for consideration of her objections with regard to the levy of luxury tax, accompanied by documents that would establish that the construction of the building was completed before 1-4-1999, within a period of one month from the date of receipt of a copy of this judgment, the respondents shall consider the said objection and pass fresh orders of assessment to luxury tax for the years 2003-2004 onwards. It is made clear that, if no objections are filed by the petitioner within the period granted to him in this judgment, he shall not get the benefit of this judgment for the said assessment years.