
(2004) 10 KL CK 0020

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16022 of 2004

Shamsudeen

APPELLANT

Vs

Tahsildar

RESPONDENT

Date of Decision : 24-10-2004

Acts Referred:

Kerala Building Tax Act, 1975 — Section 5(2)

Citation : (2005) 1 KLT 290

Hon'ble Judges : P.R. Raman, J

Bench : Single Bench

Advocate : S. Abdul Salam, for the Appellant; Sojan James, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.R. Raman, J.—Petitioner is the owner of the building in Sy. No. 1556/15 (R.S.496) comprised in Keezhthonnakal Village in Thiruvananthapuram Taluk. Total plinth area is 250 m². He was assessed the building tax as per the provisions of the Kerala Building Tax Act, 1975 for an amount of Rs. 21,600/- against which he preferred an appeal. The Appellate Authority concurred with the view of the Assessing Officer and dismissed the appeal against which the present Writ Petition is filed.

2. While the appeal was pending, the petitioner filed a representation before the District Collector stating that in spite of the return filed the District Collector, after enquiry, directed the Tahsildar to assess the building based on the existing rate as per order dt. 31.5.2003. Naturally, the Appellate Authority being a Sub Collector has no other go but to accept the order of the District Collector and dismissed the appeal filed by the petitioner herein.

3. No finding was rendered by the Appellate Authority as to the year in which the construction was completed rather he merely accepted the order passed by the District Collector. But it is on record that the Revenue Inspector attached with the

Taluk Office, Thiruvananthapuram by letter dated 5.1.1987 informed the petitioner that he will be inspecting the building on 14.1.1987. Taking note of the fact that the petitioner has already constructed a building which is likely to be assessed under the provisions of the Kerala Buildings Tax Act. But so, however, an order of assessment was passed only on 17.9.2003 at the rate specified in the Kerala Building Tax Act, 1975 as amended and was in force as on the date of the order.

4. The Kerala Buildings Tax Act, 1975 was amended by Act 3 of 1992. Prior to the amendment as per the provisions stood then the tax has to be levied based on the capital value of the building. By virtue of the amendment brought out to Section 5 in the year 1992, the method of assessment was changed and the assessment has to be made based on the plinth area, at the rate prescribed in the schedule of the new Act. Admittedly since the building was constructed prior to the amended Act 1992, the question arises for consideration is as to whether the building in the present case would be assessed as per the then existing provision or based on the amended provision in the year 1992.

5. Section 5 of the Kerala Buildings Tax Act as amended by Act 3 of 1992 is the charge in Section 5 which provides that there shall be charged a tax referred to as "Building Tax" based on the plinth area at the rate specified above on every building the construction of which is completed on or after the appointed day. In view of the change in the mode of assessment to the building tax from the capital value method or plinth area method appointed day could only be the date on which the new provisions came into force. However, by virtue of Section 5(2) of the Act in the case of any building, the construction of which is completed prior to the appointed day but the assessment which has not been initiated or completed against which appeal or revision has been filed building tax shall be assessed on the basis of the plinth area at the rate specified in the Schedule. Therefore, in the case of a building constructed prior to the appointed day only by virtue of Sub-section 2 of Section 5 of the Act that building could be assessed at the new rate provided the conditions mentioned therein are satisfied. Since the section is not under challenge, the case has to be decided based on the provisions contained in Section 5(2) of the Act. But going by Sub-section 2 of Section 5 in the case of a building the construction of which is completed prior to the appointed day tax can be assessed as per the new Act only if the assessment has not been initiated or completed. In the present case, the Revenue Inspector by Ext.P2 notice has already initiated steps for the assessment by conducting an inspection. Ext.P2 is dated 5.1.1987 long prior to the amendment brought out in 1992. If that be so, factually this case falls outside the purview of Section 5(2) of the Kerala Building Tax Act, 1975 as amended by Act 3 of 1992.

6. In this view of the matter, the assessment based on the existing rate of tax as per the amended provisions, is contrary to law and accordingly, the assessment has to be set aside. Hence Exts.P4 and P7 are quashed. The Assessing Officer shall reassess the building based on the unamended provision, after due notice

to the petitioner. Whatever amount remitted by the petitioner towards the building tax shall be adjusted towards his liability and if there is any excess amount paid, the same shall be refunded to the petitioner.

7. In the absence of any dispute regarding the area of construction what is required is only the assessment of the capital value. On receipt of notice, the petitioner shall furnish materials for computation of the capital value. The Assessing Officer shall consider such materials placed on record and determine the amount payable towards the building tax.

Writ Petition is allowed as above.