
(2000) 11 KL CK 0078
In the High Court Of Kerala
Case No : W. A. No. 2549 of 2000

Sosamma T. Ninan

APPELLANT

Vs

Palakkad Municipality

RESPONDENT

Date of Decision : 09-11-2000

Acts Referred:

Kerala Municipalities Act, 1960 — Section 134

Citation : (2000) 2 KLJ 952

Hon'ble Judges : Kurian Joseph, J;K.K. Usha, J

Bench : Division Bench

Advocate : T.M. Sreedharan and N. Unnikrishnan, for the Appellant; Thambi Jacob and Benny Gervacis, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—Petitioner in O.P.17434 of 1993 is the appellant. The Original Petition was filed challenging the steps taken by the Palakkad Municipality revising the property tax assessment of the buildings of the petitioner, Those assessments are Exts.PI series. Petitioner took up the matter before the Municipal Council and by Ext.P5 proceedings dated 20.11.1993 the Council slightly modified the demand. Aggrieved -by Ext.P5 proceedings of the appellate authority, the Municipal Council, the petitioner filed the Original Petition. The main contention taken by the petitioner was that the 1st respondent-Commissioner of the Municipality lacked jurisdiction to revise the assessments already made on the ground of "under-assessment". The learned Single Judge found that the action taken by the Municipality was justifiable u/s 134 of the Kerala Municipalities Act, 1960 since the tax that can be levied from the petitioner had escaped from assessment and that was brought to the notice of the Municipality only later. Section 134 of the said Act permits to realise such tax for the three years prior to the date of revised assessment and since the revised assessment was within the above period, Ext.P5 was in order, according to the learned Single Judge. The learned Single Judge also found that Ext.P5 was a

speaking order, passed after verifying all the records, hearing the parties and also making inspection of the premises. In that view of the matter, the Original Petition was dismissed.

2. Learned counsel for the appellant submits that Section 134 of the Kerala Municipalities Act, 1960 permitted the assessment only in case of "escape from assessment" and it did not take in "under-assessment". It is significant in this context to note that Ext.PI series were issued under Part I-Taxation Rules of Schedule II to the Kerala Municipalities Act, 1960. Rule 4(1) of the said Rules provides as follows :-

If at any time it appears to the Council that any person or property has been inadequately assessed or inadvertently or improperly omitted from the assessment books relating to any tax, or that there is any clerical or arithmetical error in the said books, it may direct the commissioner to amend the said books in such manner as it deems just or necessary."

The proviso to Rule 10 also contemplates an enhancement in assessment. Rule 11, in so far as it is relevant, reads as follows:-

11. In every case in which, between one general revision and another, the commissioner assesses any property for the first time or increases the assessment on any property otherwise than in consequence of a general enhancement of the rate at which the property tax is leviable. Thus it can be seen that it is not as if Municipality or the Commissioner lacks competency to revise an assessment in case of under-assessment.

3. What the Commissioner did in Ext.PI series and the Council in Ext.P5 was only to revise the assessment of tax in respect of the buildings of the appellant as there was an inadequate assessment. It is also significant in this context to note that the assessment made by the Commissioner and consideration at the appellate stage as per Ext.P5 was on the basis of the rental income fetched by the petitioner. Even otherwise, under the Kerala Municipalities Act, 1960 tax has to be fixed u/s 100 of the said Act on the basis of "the gross annual rent at which they may reasonably be expected to let from month to month or from year to year". In that view of the matter also, we do not find any merit in the Writ Appeal."

Writ Appeal is accordingly dismissed.