(2008) 07 KL CK 0022

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7046 of 2006

Sunny E.M. — APPELLANT

Vs

The Tahsildar, Mukundapuram Taluk and Others — RESPONDENT

Date of Decision : 04-07-2008

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

Citation : AIR 2008 Ker 214 : (2008) 3 KLJ 545 : (2008) 3 KLT 766

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : T.M. Chandran, for the Appellant; Mathew George Vadakkel (GP), for the Respondent

Judgement

1. What is the crucial date - the date of completion of construction of the building or the date of occupation - for the purpose of luxury tax assessment under the Kerala Building Tax Act, 1975 (hereinafter referred to as ''the Act''), is the question to be decided in this case. It is the case of the petitioner that he completed the construction of his residential building with a plinth area of 425.96 square meter, on 25.3.1999. For the purpose of assessment of building tax under the Act, a return was submitted in form No. II (Ext.P1), prescribed under Rule 4 of the Kerala Building Tax Rules, 1974 (hereinafter referred to as ''the Rules''). According to the petitioner, based on the return, an order of assessment was served on him in Form No. V, prescribed under Rule 8 of the Rules, wherein also, the date of completion of construction of the building is shown as 25.3.1999. It is seen from Ext.P1 that the date of completion of the building is 25.3.1999 and the date of occupation is 1.4.1999. While so, the petitioner was issued Ext.P2 demand u/s 5A of the Act, demanding an amount of Rs. 2,000/- per annum, by way of luxury tax. The assessment is given effect from 1999-2000 onwards. It is stated in the notice itself that...." a building has been constructed by you after 1.4.1999 having a plinth area of 278.7 square meters". The petitioner pursued the matter in appeal and revision leading to the impugned orders. The reason for dismissing the appeal is that there was no evidence available to the effect that

the completion of construction of the building is before 1.4.1999. Aggrieved, the writ petition, since there is no other statutory remedy available to the petitioner. Section 5(1) of the Act provides for charge of building tax, which reads as follows:-

Charge of building tax.- (1) Subject to the other provisions contained in this Act, there shall be charged tax (hereinafter referred to as "building tax") based on the plinth area at the rate specified in the Schedule on every building the construction of which is completed on or after the appointed day.

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Explanation.- For the purposes of this Act, the construction of a building shall be deemed to have been completed when it is ready for occupation or has been actually occupied, whichever is earlier.

Section 5A was introduced by way of an amendment in the year 1999. The provision reads as follows:

5A. Charge of luxury tax.(1) Notwithstanding anything contained in this Act, there shall be charged a luxury tax of two thousand rupees annually on all residential buildings having a plinth area of 278.7 square meters or more and completed on or after the 1st day of April, 1999.

A residential building having a plinth area of 278.7 square meters or more is thus liable to be assessed for the purpose of luxury tax only if the construction of the said building is completed on or after 1.4.1999. In order to avoid any ambiguity with regard to the expression ''completion'', it has been provided in the explanation that a building is deemed to have been completed, when it is completed and made ready for occupation or when it is actually occupied, whichever is earlier. It is the case of the petitioner that he had completed the construction of the building on 25.3.1999; but he started occupation only on 1.4.1999. It is the further case of the petitioner that he had produced the photographs of the house warming ceremony conducted on 31.3.1999, the invitation letter and the personal diary showing the date of occupation.

2. It is seen from Ext.P1 return submitted by the petitioner in Form No. II, prescribed under Rule 4 of the Rules and Ext.P2 demand notice issued to the petitioner u/s 5A of the Act, that the date of completion of construction of the building is 25.3.1999. That apart, the order of assessment of building tax u/s 5 of the Act issued in Form No. V also has given the date 25.3.1999 as the date of completion of construction of the building. According to the petitioner himself, he had completed the construction of the building on 25.3.1999, had conducted the house warming ceremony on 31.3.1999 and had actually occupied the building on 1.4.1999. Thus, it is fairly clear that the construction of the building was completed for the purpose of occupation before 1.4.1999. Only those residential buildings having a plinth area of 278.7 square meters or more, whose construction was completed on or after 1.4.1999 are exigible to luxury tax. There

is no difference as to the date of completion of construction of the building under the provisions of the Act for the purpose of assessment of building tax as well as luxury tax; what is relevant is the date of completion of construction of the building so as to make it ready for occupation or the date of actual occupation, whichever is earlier. The date of occupation by itself is relevant for the purpose of property tax under the Kerala Panchayat Raj Act or the Kerala Municipality Act. The date of completion of the construction for the purpose of building tax u/s 5 has to be the date of completion of the construction for the purpose also of luxury tax u/s 5A of the Act. The explanation u/s 5 is applicable to the whole Act. In the instant case, even from the records of the assessing authority under the act it can be seen that the date of completion of the construction is 25.3.1999. The petitioner himself admits that he had actually occupied the building on 1.4.1999. Therefore, it is clear that the petitioner had completed the construction of the building and had made it ready for occupation before 1.4.1999 and hence the building construed by the petitioner is not liable to be assessed for the purpose of luxury tax u/s 5A of the Act. The impugned orders are hence quashed. In case any amounts have been collected from the petitioner, the same shall be refunded within two months from the date of production of a copy of the judgment.

The writ petition is disposed of as above.

