

(1957) 02 KL CK 0026
In the High Court Of Kerala
Case No : O. P. No. 182 of 1955 (E)

The Travancore Rayons Ltd

APPELLANT

Vs

The Municipal Council, Perumbavoor and another

RESPONDENT

Date of Decision : 13-02-1957

Acts Referred:

Travancore District Municipalities Act, 1116 — Section 81(2)

Citation : (1957) KLJ 316

Hon'ble Judges : M.S. Menon, J;K. Sankaras, J

Bench : Division Bench

Advocate : K.P. Abraham, for the Appellant; T.N. Subramania Iyer and S Subramania Iyer, for the Respondent

Final Decision : Allowed

Judgement

M.S. Menon, J.—The petitioner is the Travancore Rayons Limited, and the respondents, the Municipal Council, Perumbavoor and the Commissioner of the said Municipality. The petitioner challenged the validity of certain assessments to property tax under the Travancore District Municipalities Act, 1116. The assessments concerned are in respect of the second half of 1953-54 and this first six months of 1954-55 and 1955-56. The buildings in respect of which the petition is pressed before us are:

- (a) Office bearing Municipal No. 126;
- (b) Club House bearing Municipal No. 133;
- (c) General Store bearing Municipal No. 128; and
- (d) Five structures included in Municipal No. 127 (items marked 3, 4, 5, 9 and 10 in the plan, Ext. E)

The petitioner does not seem to have objected at any time to the allotment of a single municipal number, No. 127, to the whole Factory including items 3, 4, 5, 9 and 10 of the plan, Ext. E, and it is clear from page 89 of the Municipal file Ext. I,

that the objections to the method of assessment adopted in respect of both Municipal Nos. 127 (Factory) and 198 (General Store) were given up by the petitioner. It is specifically recorded on page 89 of the file by the Commissioner that:

the Secretary agreed with the principle adopted in the matter of assessment of Factory and Store on capital cost basis.

In view of this, the contentions of the petitioner have to be confined to the assessments of the Office bearing Municipal No. 126 and the Club House bearing Municipal No. 133.

2. "Property tax" under the Travancore District Municipalities Act, 1116, is a percentage of the annual value, and sub-section (2) of section 81 of the Act (omitting the portions which are not material to this case) reads as follows:

The annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year less a deduction, in the case of buildings only, of ten per centum of such annual rent and the said deduction shall in lieu of all allowance for repairs or on any other account whatever:

Provided that

(a) in the case of

(ii) any building of a class not ordinarily let the gross annual rent of which cannot, in the opinion of the executive authority, be estimated, the annual value of the premises shall be deemed to be six percent of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall in no case be less than ten per centum of such cost

3. According to the petitioner the assessments should have been on the rental basis and the assessments by the Commissioner on the basis of (a) (ii) are unsustainable. Before adopting the method of assessment indicated in (a) (ii) the Commissioner has to be satisfied on two points:

(1) that the building is of a class not ordinary let and; and

(2) that the building is one the gross annual rent of which cannot in his opinion be estimated.

In other words, even when a building belongs to a class not ordinarily let, if in the opinion of the Commissioner its gross annual rent can be estimated, such a building can be assessed only on the rental basis and not under the method indicated in (a) (ii). All that the Commissioner says is:

I hold the view that these buildings come u/s I(2) (ii) of the T. D. M. Act and those buildings are to be assessed accordingly-. (pp. 49-50 of Ext. I)

There is nothing in the file to show that the Commissioner realized that he should be satisfied not only that the building is of a class not ordinarily let but also that in his opinion its gross annual rent is not possible to be estimated. In view of this the assessments impugned in so far as they relate to building Nos. 126 and 133 cannot be sustained and have to be quashed.

4. The learned counsel for the Municipality submitted that if we consider the assessments unsustainable we should at least uphold them to the extent of the tax which would have been payable on the basis of the rental value admitted by the petitioner. This is clearly impossible as it will amount to the substitution of a fresh assessment by this court. All that we can do is to quash the assessments and leave it to the Municipality to make fresh assessments according to law.

5. The learned counsel for the Municipality also drew our attention to the decision of the Privy Council in LXXI Indian Appeals 113. That decision is no authority for the proposition that there can be an assessment on the basis adopted by the Commissioner without satisfying the two conditions we have mentioned in paragraph 4 above. All that was decided in that case is clearly summarized in the Head Note as follows:

The provision in sub-s. 2 of s. 82 of the Madras District Municipalities Act, 1920, as amended to 1933, that for the purpose of the imposition of property tax, the annual value of lands and buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to let from month to month or from year to year, entitles the rating authority in ascertaining the annual value to have recourse to any of the recognized methods of arriving at the rent which a hypothetical tenant might reasonably be expected to pay, including the method of taking a percentage of the capital value, and the fact that the proviso to the subsection expressly enjoins resort to the capital value method in the case of two specified classes of buildings does not by implication prohibit its application in every other case not covered by the proviso. The proviso leaves the generality of the substantive enactment in the sub-section unqualified, except in so far as concerns the particular subjects to which the proviso relates, and accordingly the rating authority are not precluded from adopting a percentage of the capital value of vacant lands as a method of ascertaining their annual value for property tax purposes merely by reason of the fact that this method is specifically enjoined in the particular instances mentioned in the proviso.

The petition is allowed in the manner and to the extent indicated above. No costs.