(2023) 06 KL CK 0309

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19355 Of 2023

Thomas John APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 20-06-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Building Tax Act, 1975 — Section 7(3), 9(5)

Citation : (2023) 06 KL CK 0309

Hon'ble Judges : C. S. Dias, J

Bench : Single Bench

Advocate : Leo Lukose, Enoch David Simon Joel, S.Sreedev, Rony Jose, Karol Mathews Sebastian Alencherry, Derick Mathai Saji, Thushara James

Final Decision : Dismissed

Judgement

C. S. Dias, J

1. The writ petition is filed to quash Exts P2 assessment order, P5 appellate order and P9 demand notice.

2. The relevant facts for the determination of the writ petition are:

(i) The petitioner’s father Late T.V Thomas had constructed a double storey building in the year 1963. As per Ext P1 (a) certificate, the building is at least 50 years old. Though the construction of the building was completed in the year 1963, it was assessed to tax only in 1975.

(ii) In 2002, the petitioner’s father died. The following year, the petitioner decided to construct an additional floor. Accordingly, he obtained a building permit, but was unable to complete the construction.

(iii) . Shockingly in 2020, the fourth respondent conducted an inspection and directed the petitioner to produce the building tax receipts. Unfortunately, the documents pertaining to the building tax were irrevocably lost in the 2018 floods.

(iv) . The petitioner apprised the fourth respondent that other than for the improvements made in the year 2003 and the un-constructed floor, the entire building was assessed to building tax.

(v). To the petitioner’s dismay, the fourth respondent has issued Ext P2 assessment order, demanding Rs.3,60,000/- as one time building tax.

(vi).It is relevant to state, no notice under Sec.7(3) of the Kerala Building Tax Act, 1975 (in short, ‘Act’) was served on the petitioner or in the name of his father. Ext P2 order has been mechanically passed, without any application of mind.

(vii). Immediately on receipt of Ext P2 order, the petitioner submitted Exts P3 and P4 letters before the respondents 4 and 3, respectively.

(viii). The third respondent had treated Ext P4 letter as an appeal filed under the provisions of the Act and has passed Ext P5 order, upholding Ext P2 assessment order.

(ix). Unfortunately, due to the COVID-19 pandemic, the petitioner was unable to challenge Ext P5 order in revision before the second respondent or before this Court. Moreover, the petitioner is going through severe financial crisis.

(x). Consequent to Ext P5 order, the fourth respondent has issued Ext P6 notice threatening to take coercive steps against the petitioner. Immediately, the petitioner deposited Rs.90,000/- towards the first instalment and has submitted an application to reconsider the appeal preferred by him.

(xi). The petitioner has also submitted Ext P8 representation before the second respondent, to direct the third respondent to reconsider his appeal on merits. However, there has been no response from the respondents yet. Now, the fifth respondent has issued Ext P9 demand notice, threatening to initiate revenue recovery proceedings. Exts P2, P5 and P9 are patently illegal, arbitrary and unjustifiable. Hence, the writ petition.

3. Heard: Sri.Leo Lukose, the learned Counsel appearing for the petitioner and Smt.Thushara James, the learned Senior Government Pleader appearing for the respondents.

4. Sri.Leo Lukose vehemently argued that the entire proceedings leading to Exts P2, P5 and P9 are unsustainable in law because the fourth respondent has not issued a notice under Sec.7(3) of the Act, which is mandatory in the light of the law laid down by this Court in Provincial Superior, Franciscan Chlarist Congregation of Nuns vs. State of Kerala and ors [2009 (1) KLT 582]. The learned counsel also contended that the impugned orders and demand are a nullity as it is passed against a dead man. The law is well settled in Dharamraj vs. Income Tax Officer [MANU/DE/0204/2022] by the Delhi High Court. He canvassed the position that even though this Court does not ordinarily exercise its powers under Article 226 of the Constitution of India, in case of an alternative

statutory remedy, in the case on hand as there is a violation of principles of natural justice, certainly this Court can step in and set aside the orders. He also placed reliance on the decision of this Court in S.N Govinda Prabhu and Bros. vs. Additional Sales Tax Officer [1984 KLT Case No.92]. He prayed that Exts P2, P5 and P9 may be set aside and the fourth respondent be directed to reconsider the entire matter afresh.

5. Smt.Thushara James strenuously countered the above submission by contending that writ petition is bad for suppression of material facts. She handed over a notice dated 11.2.2017 issued by the fourth respondent, under Sec.7(3) of the Act, to the petitioner, calling upon him to furnish returns in respect of his building within thirty days, failing which orders would be passed under Sec.9(5) of the Act. She also handed over the proceedings of the fourth respondent dated 6.3.2017 to substantiate that the petitioner had appeared for a hearing before the fourth respondent. She further drew the attention of this Court to Ext P4 appeal submitted by the petitioner before the third respondent, wherein the petitioner has in unambiguous terms admitted that he had ventured to construct an additional floor and has sought time to pay the demand in instalments. She argued that the contentions raised by the learned counsel for the petitioner are all untenable. The petitioner is only attempting to protract the inevitable through the present writ petition, which is experimental in nature. Hence, the writ petition may be dismissed.

6. The pleadings in the writ petition substantiate that the petitioner's father died in the year 2002. The petitioner admits that he had submitted an application in the year 2003, seeking permission to construct an additional floor. Admittedly, a building permit was issued. Nonetheless, the petitioner asserts that the construction of the additional floor is incomplete, even after two decades.

7. The above admissions disprove the petitioner's allegation that the building only belongs to his father and, therefore, the respondents have to proceed against his father.

8. Indisputably, it was the petitioner who obtained the building permit to construct the additional floor on the existing building, which in turn establishes that he is the owner and in occupation of the said building. In addition to the above, the notice dated 11.2.2017 was served on the petitioner and he appeared for hearing before the fourth respondent. Thus, the petitioner's contention that he did not receive notice is incorrect.

9. Furthermore, on receipt of Ext P2 order, the petitioner filed Ext P4 appeal admitting that he has carried out a construction, but the work is incomplete. Yet, he volunteered to pay off the demand in instalments.

10. The above sequence of events prove beyond any doubt that there is no violation of principles of natural justice, as alleged in the writ petition. It is after the petitioner exhausted his statutory remedy in the year 2020, after nearly three years that he has filed the instant writ petition raising all the above

untenable contentions, which are disputed questions of fact. After venturing into statutory remedy and suffering an adverse order, the petitioner cannot at his whims and caprice approach this Court under Article 226 of the Constitution of India, on the perception that the doors of the Constitutional Court are wide open. There is no illegality, perversity or irrationality in the action of the respondents. This Court does not find any error to quash Exts P2, P5 and P9. Nonetheless, as an act of indulgence and exercising the discretion of this Court, the petitioner is permitted to pay the demand in instalments.

Resultantly, the writ petition is dismissed, but by permitting the petitioner to submit a representation before the fourth respondent for permission to pay off the demand covered by Ext P9 notice, in instalments and subject to condition that the petitioner deposits an amount of Rs.75,000/- along with the representation within three weeks from today. If the petitioner complies with the said condition, the fourth respondent shall sympathetically consider the petitioner’s representation and permit him to pay the outstanding amount in equated monthly instalments to be fixed by the fourth respondent.

