(2002) 05 KL CK 0018

In the High Court Of Kerala

Case No : W.A. No. 998 of 2002

Thomas Kurian APPELLANT

Vs

Joseph Kurian RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Kerala Municipalities Act, 1960 — Section 271, 272
Kerala Municipality (Amendment) Act, 1994 — Section 271, 272

Citation : AIR 2002 Ker 355 : (2002) 3 ILR (Ker) 95 : (2002) 1 KLJ 771

Hon'ble Judges : V.P. Mohan Kumar, Acting C.J.;K.K. Denesan, J

Bench : Division Bench

Advocate : V.N. Achutha Kurup, for the Appellant; J. Om Prakash and Siby Mathew, for the Respondent

Final Decision : Allowed

Judgement

V.P. Mohan Kumar, Ag. C.J.

1. We have heard Sri. Achutha Kurup learned counsel for the appellant as also Mr. Om Prakash counsel for the contesting respondent. On the consent of both parties, the Writ Appeal itself is taken up for hearing.

2. A premises was let out to the appellant by the contesting respondent-landlord (hereinafter he is referred to as ''the landlord''). The appellant is conducting a trade in opticals in the premises in question. He displayed an advertisement board in neon light in the said premises publicising the wares he is trading in . The contesting respondent complained with the local authority that this is being done in violation of Sections 271 and 272 of the Kerala Municipality Act, 1994. The local authority overruled the objection of the landlord, by Ext. P5 order. Complaining that the erection of the advertising board is in violation of the above sections, the contesting respondent filed the Writ Petition with a prayer to quash Ext. P5. In Ext. P5 the Secretary of the local authority had also informed the landlord that this is a dispute between the landlord and the tenant and the Municipality cannot interfere therein.

3. After hearing the respective counsel, the learned single Judge set aside Ext. P5 communication and directed the authority to look into the issue afresh and take if found necessary steps to. remove the advertisement board. Against this order the tenant, appellant, has come up in appeal.

4. Section 272(1) reads as under:

"No advertisement shall, after the levy of the tax u/s 271 has been determined upon by the Council, be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding or structure within the municipal area or shall be displayed in any manner whatsoever in any place in that area without the written permission of the Secretary."

We may notice that Section 272 makes it very clear that it is only after the stipulation of tax on advertisement u/s 271, permission from the Secretary has to be received. That is to say only after levy of tax u/s 271 of the Act is determined Section 272 is attracted. That is to say, unless and until the advertisement charge has been fixed by the Municipality in exercise of its power u/s 271, the penal consequence of Section 272 does not come into play. We may at this stage turn to Section 271. Material part of Section 271 reads as follows:

"271. Tax on advertisements : Every person who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure in a municipal area any advertisement or who displays any advertisement to public view in any manner whatsoever in any place in such area, whether public or private, shall pay on every such advertisement a tax calculated at such rates and in such manner and subject to such exemptions as the Council with the approval of the Government by resolution determine:

XXX XXX XXX XXX

Provided also that no tax shall be levied underthis section on any advertisement oranotice:-

XXX XXX XXX XX

Provided also that no such tax shall be levied on any advertisement which is not a sky sign and which -

(a) is exhibited within the window of any building which is not a public place; or

(b) relates to the trade or business carried on within the landor building upon or over, which such advertisement is exhibited, or to any sale or letting of such land or building or any effects therein or to any sale, entertainment or meeting to be held upon or in the same; or"

Admittedly the section itself operates, subject to exemptions made by the Statute. The levy of advertisement tax can be exercised by the local authority only with respect to which the lands and categories that are not exempted under the Statute. When once exemption operates and certain categories of advertisement is removed from the operation of the levy of tax, then the levy of tax can be only in respect of display of boards within the purview of the Statute. The statute do not apply to the exempted category of advertisements. Hence, if u/s 271 of the Act the local authority notifies levy of advertisement tax, it relates only to nonexempted categories, and Section 272 will not apply to other categories to which Section 271 does not apply.

5. In this case, what is being advertised is with respect to a trade or business that is being carried on within the premises or upon the building taken on rent by the tenant. It is not disputed that the advertisement board is situated in the premises where the building is let out to the tenant in which the trade in optical is conducted. Section 271 does not state anything about imposing tax on such advertisements. Therefore, it is a clear case of an advertisement exempted within the purview of Section 271. If that be so, there is no imposition of tax on such advertisement u/s 271. So, as by virtue of Section 271 itself, there is no levy of advertisement tax, there is no need for seeking any further exemption from Municipality. In such circumstances, there do not exist any advertisement within the purview of Sections 271 or 272 of the Kerala Municipality Act, 1994 made by the appellant and as such Section 272 is not violated. If this is so, there is no necessity for the Secretary of the local body to examine the case afresh or complying the tenant with the requirement of Section 272. In this view of the matter, a fresh consideration and disposal again is not called for.

We allow the appeal and dismiss the Original Petition filed by the contesting respondent-landlord. There will be no order as to costs.

