

(2012) 01 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22833 of 2006

T.R. Sankara Narayanan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14
Kerala Panchayat Raj (Building Tax and Surcharge thereon) Rules, 1996 — Rule 10,
12, 6, 6(3), 6(4)

Citation : (2012) 1 KLJ 442

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : M. Unnikrishna Menon; K.M. Jamaludheen and Latha Prabhakaran,
for the Appellant; Pirappancode V. Sreedharan Nair ; Pirappancode V.S. Sudhir
and Sanjeetha K.A (GP), for the Respondent

Judgement

S. Siri Jagan, J.—The petitioner in this writ petition is the owner of a marriage hall. That hall was assessed to building tax under the Kerala Panchayat Raj Act and Ext.P1 bill was issued to the petitioner directing the petitioner to pay yearly tax of Rs. 3,844/- with effect from 1.4.1996 in respect of the said hall. Subsequently, by Ext.P2 demand Notice, the petitioner was directed to show cause why the building tax in respect of the property should not be re-assessed under Rule 6(4) as Rs. 17,500/- with service tax (LT) of Rs. 5,000/- and Library cess of Rs. 875/-. The petitioner submitted Ext.P3 reply objecting to the proposal. Thereafter, by Ext.P4, the proposal was confirmed and the petitioner was directed to pay the balance building tax payable accordingly. Against Ext.P4, the petitioner filed an appeal before the Panchayat. By Ext.P8 judgment in O.P. No. . 21954/1997, the Panchayat was directed to consider and pass orders on Ext.P7 appeal filed by the petitioner. Pursuant thereto, Ext.P9 order was passed holding that there is no reason to reduce the tax assessed. The petitioner filed Ext.P10 before the 2nd respondent pointing out that, while passing Ext.P9 order, the specific directions of this Court in Ext.P8 judgment had not been complied

with. Thereafter, the petitioner was served with Ext.P11 order again confirming the earlier orders. Although the petitioner approached this Court by filing O.P. No. 7339/1998, the petitioner was relegated to the alternate remedy by way of revision before the Government. The petitioner filed Ext.P13 revision. Subsequently, the petitioner was served with Ext.P14 Notice directing the petitioner to pay an amount of Rs. 91,299/- being the arrears of building tax. Although the petitioner filed Ext.P15 petition before the Panchayat against the same, the same was rejected. In Ext.P13 revision, by Ext.P18 order, the Government directed the Panchayat to re-assess the building tax due on the petitioner's building under Rule 6(4) of the Kerala Panchayat Raj (Building Tax & Surcharge thereon) Rules, 1996. Thereupon, Ext.P19 order was passed fixing the building tax of the petitioner's building as Rs. 22,050/- along with lighting tax of Rs. 6,300/- and Library cess of Rs. 1,103/-. Against that order, the petitioner filed Ext.P20 appeal before the Deputy Director of Panchayats, which was disposed of by Ext.P21 order holding that the tax so assessed shall be given effect to only from the assessment year 1997-1998. It is under the above circumstances, the petitioner has filed this writ petition seeking the following reliefs: (i) to declare that Rule 6(4) of Building Tax Rules; enabling the determination of property tax reckoning Fifty instances of the functions in a year is discriminatory, irrational and offends Article 14 of the Constitution and the liable to be quashed and the higher revised property tax determined by the 2nd respondent is thus unconstitutional in the case of the petitioner, evidenced through Exhibits P19 which resulted the appellate order Exhibit P-21 is illegal.

(ii) to declare that Exhibit P19 letter of communication is hit by the principles of natural justice so far the petitioner was Not afforded a reasonable opportunity of being heard especially to the true spirit of Exhibit P18 appellate order and therefore is bad under law.

(iii) to quash Exhibit P19 order issued against the petitioner by the 2nd respondent by an appropriate Writ of certiorari, as one biased and illegal as to its arbitrariness and infirmity to the provisions of law and one passed with malice, especially in the light of Exhibits P5 and P6; and P-21 order passed by the 3rd respondent against the petitioner is No. t in accordance with law.

(iv) to direct the 2nd respondent by way of an appropriate writ of direction to place before this Ho No. urable Court the assessment records during the year 1997-8 and onwards of "Maria" and "Panthal" auditoriums which are under the same Grama Panchayath.

(v) to restrain the 2nd respondent by an appropriate order of this Ho No. urable Court from enforcing Exhibit P21 order of the 3rd respondent and taking further proceedings in furtherance thereof

A counter affidavit has been filed on behalf of the 2nd respondent seeking to justify the assessment made by the Panchayat.

2. I have considered the rival contentions in detail. The period of assessment

involved in this case is for the five year period starting from 1.4.1996. It is No. t disputed before me that for the said period, the assessment was made by the Panchayat and Ext.P1 bill for the yearly tax of Rs. 3,844/- had already been issued to the petitioner In accordance with the said assessment for the period from 1.4.1996 to 31.3.1997. Rule 6 of the Kerala Panchayat Raj (Building Tax and Surcharge) Rules, 1996 reads thus:

6. The standing Committee shall, once in every five years, fix the tax payable annually and the owner shall, in two half yearly installments, pay the same.-(1) The rental value of any building, for the purpose of building tax shall be fixed by the Standing Committee with the assistance of the Secretary or of the Panchayat Officials holding technical post: Provided that the annual rental value of any building for which the members of the Standing Committee are liable to pay, the tax shall be fixed by the Panchayat with the assistance of the Secretary or the Officer holding technical post.

(2) The Standing Committee shall, once in very five years, fix the annual rental value of the building and shall lavy the building tax thereof and the owner of the building, on which the tax has been levied, may remit the same in two equal annual installments:

Provided that the entire tax for a financial year shall be remitted every year before the thirty-first day of October of that financial year. During the period of initial preparation of the tax assessment registers and on the completion of the general revision, the tax shall be remitted on or before the last date shown in the bill issued under Rule 12.

(3) The increase in tax, in the general revision, for the buildings included in the previous assessment and No. t subjected to re No. vation, extension etc. shall No. t exceed twenty-five per cent for the terraced buildings and ten per cent for those roofed with tiles, sheets and other materials.

(4) The tax in respect of those establishments let out on daily rent like lodges, Kalyanamandapam, halls etc. shall be fixed on the basis of the amount collected as daily rent. In the case of such buildings, fifty percent of the total amount of rent collected shall be deducted towards electricity, furniture and service charge and tax shall be levied on the presumption that they are let out at least for one hundred days in a year.

(5) The Secretary shall record in writing the annual value or capital value fixed by the Standing Committee and the tax payable thereon in the registers maintained for the purpose in the Panchayat Office. The following informations in so far as the same may be collected in respect of every taxable item, shall be recorded in such registers.

(a) name of the owner;

(b) name of the occupier;

(c) designation if any of the owner or occupier.

(d) name of the ward and street if any, in which it is situated and the house name and any survey number or other number thereof;

(e) the annual value or capital value as the case may be; and

(f) the amount of tax payable.

(6) The Secretary shall, immediately on completion of the tax assessment, keep the assessment register of every ward signed by the Chairman of the Standing Committee after adding up the amount of taxes and recording the same in figures and words.

(7) The Standing Committee shall once in five years, completely revise the tax registers in respect of building tax.

(8) The Standing Committee may, in case any re No. vation or new addition has been made to a building on which tax has been levied, after a general revision thereof, alter or make modification in the annual rental value or in the amount of tax of the building. Such modification shall be deemed to have taken effect on the first day of the year of making the same.

Provided that when the modification is made in any year after the date of publication of public Notice under Rule 7 it shall have effect only from the succeeding year.

(underlining supplied)

The said rule contemplates fixation of annual rental value and tax payable on a building once in five years. Under sub rule 8 alteration or modification of annual rental value is permitted only in case of re No. vation or new addition. That being so, in the absence of a specific provision in the Act or Rules, empowering the Panchayat to do so, the Panchayat can No. t revise the annual rental value already assessed for a five year period, within the said five year period except in case of re No. vation or new addition.

3. Of course under Rule 7 of the Kerala Panchayat Raj (Taxation, Levy and Appeal) Rules 1996, at any time the standing committee for finance can direct the Secretary to amend the assessment books, if it appears to the standing committee that any property has been inadequately assessed or that such property has been inadvertently or improperly omitted from the assessment books or that there is any clerical or arithmetical error in the said books relating to tax. Ext.P2 is the Notice issued to the petitioner for enhancing the tax. In the same, the Panchayat has No. case that the assessment followed by Ext.P1 bill was mistakenly made. They also have No. case that any re No. vation or new addition has been made to the building. What is stated in Ext.P2 is that after the assessment was completed, the petitioner had increased the rent for the building as Rs. 5,000/- per day and therefore, it is proposed to revise the building tax payable under Rule 6(4). That situation is No. t covered by Rule 7 of the Kerala

Panchayat Raj (Taxation, Levy and Appeal) Rules 1996. Neither the Panchayat Raj Act No. 15 of 1994 nor the Rules framed thereunder contain any provision empowering the Panchayat to revise the building tax already assessed, in between two quinquennial revisions. On the other hand the Scheme of the Rules provides only for quinquennial revisions.

4. Of course, the Learned Counsel for the Panchayat relies on Rule 8 of the Kerala Panchayat Raj (Building Tax & Surcharge) Rules. The said Rule reads thus: 8. Separate individual notices to be given in respect of levying and revising of tax in between two general revisions:- In any case where, in between two general revisions, the Standing Committee levy tax on a building for the first time or enhance the tax thereof in any manner other than that of general revision, the Secretary shall, by a separate notice, inform the tax payer in respect of such building and shall also intimate that petitions, against such renewal of tax if received in the Panchayat Office within 15 days from the date of issuance of the notice, shall be considered by the Standing Committee.

That rule relates to assessment of a new building for the first time in between two general revisions. That does Not relate to revision of a building tax in respect of a building, which has already been assessed to tax, before the next general revision. The words "enhance the tax thereof "occurring therein should be read in conjunction with Rule 6 (8) in relation to re No. vation or new addition. As such, Rule 8 can No. t be pressed into service to justify Ext.P2 Notice and all other subsequent proceedings. On the other hand Rule 8 lends credence to the view that except in the case of first assessment of a building or re No. vation or new addition, there can No. t be any revision of assessment in between two general revisions. This view is fortified by Rule 12 (a) of the Rules which requires the Secretary to, after completion of the work of levying or revising tax under Rules 6 and 10, issue to every tax payer a bill stating the amount of tax payable in respect of a building every year till the next general revision under Rule 6. In this connection it should also be No. ted that under Rule 6 (3), even in general revision for buildings included in the previous assessment, unless the building is subjected to re No. vation extension etc. the increase in tax shall No. t exceed 25% for terraced buildings and 10% for those roofed with tiles, sheets and other materials. But in this case within one year of Ext.P1, the tax has been increased from Rs. 2,835 to 17,500/- which increase is by 617%. Unless the Panchayat has a case that the assessment followed by Ext.P1 bill was in any way made erroneously, or any re No. vation or new addition has been made to the building after the assessment for five years, I do No. t think that the Panchayat can validly revise the tax payable, before the next general revision. As I have already stated, the only reason stated for the upward revision of tax in Ext.P2 is that subsequent to the earlier assessment, the petitioner had revised the daily rent. If the contention of the Panchayat that they can revise the building tax on the basis of the enhancement in annual rental value in between two general revisions is accepted, then the Panchayat will have power to revise the building tax payable on all buildings every time, according to them, there is an increase in the rental

value of the building which can be every year or every month, or even every fortnight. I am not satisfied that, that is what is contemplated by the Act and Rules. That would be grossly inconvenient and impracticable for the Panchayat also and would lead to a number of bad results. Going by the Act and Rules, once an assessment is correctly made, it would hold good till the next general revision and alteration or modification in the annual rental value and in the amount of tax in between two general revisions can be made only in case of revaluation or new addition. Before the next general revision, the Panchayat has no jurisdiction to revise the tax on the ground that, after the earlier assessment, the annual rental value of the building has increased. Therefore, the entire proceedings initiated by Ext.P2 culminating in Ext.P21 order are completely without jurisdiction and accordingly, the same are quashed. It is declared that for the five year period starting from 1.4.1996, the petitioner is liable to pay the building tax only in accordance with the assessment followed by Ext.P1 demand Notice. The tax already paid in excess of the same by virtue of the orders of this Court or otherwise shall be adjusted against the future building tax due in respect of the same building.

The writ petition is allowed as above.