Eapen Chacko Vs. the Tahsildar

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SooperKanoon Citation : sooperkanoon.com/1165248

Court : Kerala

Decided On : Sep-30-2014

Judge : Honourable Mr. Justice a.K.Jayasankaran Nambiar

Appellant : Eapen Chacko

Respondent : The Tahsildar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR TUESDAY, THE30H DAY OF SEPTEMBER20148TH ASWINA, 1936 WP(C).No. 13705 of 2009 (G) ---------------------------- PETITIONERS : ------------- 1. EAPEN CHACKO,S/O.CHACKO, EZHAMALIYIL HOUSE, PERUMBAIKADAVU P.O., KOTTAYAM.

2. ALIEMMA CHACKO,W/O.EAPEN CHACKO, EZHAMALIYIL HOUSE, PERUMBAIKADAVU P.O., KOTTAYAM. BY ADVS.SRI.REJI GEORGE SRI.MOHAN PULIKKAL SMT.A.AMRUTHA VIDYADHARAN RESPONDENTS : ------------- 1. THE TAHSILDAR, KOTTAYAM TALUK.

2. STATE OF KERALA, REP.BY THE SPECIAL SECRETARY, REVENUE AND TAXES, SECRETARIAT, THIRUVANANTHAPURAM. BY SR. GOVERNMENT PLEADER SRI.LIJU V. STEPHEN THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON3009-2014, THE COURT ON THE SAME DAY DELIVERED

THE FOLLOWING: WP(C).No. 13705 of 2009 (G) APPENDIX PETITIONERS' EXHIBTIS : P1 COPY OF THE AGREEMENT DT.07.09.1998 EXECUTED BY THE PETITIONERS IN FAVOUR OF KUMARANELLOOR GRAMA PANCHAYATH. P2 COPY OF ASSESSMENT

ORDER

NO.B8(1)1963/99 DT.22.10.2002 ISSUED BY THE1T RESPONDENT TO THE PETITIONERS. P3 COPY OF

ORDER

NO.D4670/02 DATED1110.2004 PASSED BY THE RDO, KOTTAYAM. P4 TWO PHOTOGRAPHS SHOWING THE CRACKS DEVELOPED ON THE ROOF SLAB OF PETITIONERS' BUILDING DUE TO EARTHQUAKE. P5 A PHOTOGRAPH SHOWING THE PROTECTIVE ROOFING CONSTRUCTED ON THE ROOF SLAB OF THE BUILDING BY THE PETITIONERS. P6 COPY OF THE NOTICE DT.07.10.2002 ISSUED BY THE KUMARANELLOOR GRAMA PANCHAYATH TO THE PETITIONERS. P7 COPY OF THE REPLY DT.09.10.2002 SUBMITTED BY THE PETITIONERS TO THE SECRETARY, KUMARANELLOOR GRAMA PANCHAYATH. P8 COPY OF NOTICE NO.B8 (3)1963/99 DT.02.11.2004 ISSUED BY THE1T RESPONDENT TO THE PETITIONERS. P9 COPY OF PROCEEDINGS NO.B8(1)1963/99 DT.10.01.2005 OF THE1T RESPONDENT ISSUED TO THE PETITIONERS. P9(A) COPY OF THE REVISED ASSESSMENT

ORDER

NO.B8(1)1963/99 DATED NIL ISSUED BY THE1T RESPONDENT TO THE PETITIONERS. P10 COPY OF NOTICE NO.D2-5132/2008 DT.20.05.2008 IN FORM III ISSUED BY THE1T RESPONDENT TO THE PETITIONERS. P11 COPY OF RE-ASSESSMENT

ORDER

DT.03.06.2008 ISSUED BY THE1T RESPONDENT TO THE PETITIONERS. P12 COPY OF

JUDGMENT

DATED1807.2008 IN W.P.(C) NO.20743/2008. P13 COPY OF OBJECTION DATED0808.2008 FILED BY THE PETITIONERS EXCLUDING THE EXHIBITS. P14 COPY OF RE-ASSESSMENT

ORDER
NO.D2-5232/08 DATED0203.2009 ISSUED BY THE1T RESPONDENT TO THE PETITIONERS. RESPONDENTS' EXHIBITS : NIL // True Copy // DSV/04/10 P.A. To Judge A.K.JAYASANKARAN NAMBIAR, J.

--------------------------------------- W.P.(C).No.13705 of 2009 --------------------------------------- Dated this the 30th day of September, 2014

JUDGMENT

Exhibit P14 assessment order passed by the 1st respondent, levying building tax on the building constructed by the petitioners, is impugned in the writ petition. It is the case of the petitioners that the building in question was originally assessed for building tax in the year 2005. While completing the assessment in 2005, the assessing authority had taken into consideration the building as it then stood which, according to the petitioners, also contained the modifications that had been effected to the building by the petitioners, in the form of a tin roofing, on top of the building, so as to prevent water seepage during monsoon through cracks that had developed in the ceiling of the building.

2. Exhibits P9 and P9(a) are the assessment order and demand notice that were issued to the petitioners in connection with the assessment that was conducted in W.P.(C)No.13705/2009 2 2005. It is the case of the petitioners that thereafter, by Exhibit P10, notice dated 20.05.2008, issued under Section 7(3) of the Kerala Building Tax Act, 1975, they were asked to submit fresh returns in respect of an alleged additional construction that was effected by them. It is pointed out that there were no details furnished in the said notice issued to them, with regard to the additional construction which, according to the respondents, had been effected by the petitioners. Under these circumstances, the petitioners were not able to furnish any revised return to the 1st respondent Tahsildar. The 1st respondent Tahsildar, therefore, proceeded to pass Exhibit P11 order dated 03.06.2008, fixing the

building tax on the building belonging to the petitioners at an amount of `2,21,400/-. As Exhibit P11 order had been passed without hearing the petitioners, and without considering any of the objections that they proposed to file, the petitioners approached this Court through W.P. (C)No.20743 of 2008 impugning the said order. By W.P.(C)No.13705/2009 3 Exhibit P12 judgment, Exhibit P11 order of the 1st respondent Tahsildar was quashed and the Tahsildar was directed to reconsider the matter after considering Exhibit P13 objection preferred by the petitioners against the assessment that was proposed. It is thereafter, that Exhibit P14 order dated 02.03.2009 was passed by the 1st respondent Tahsildar. In Exhibit P14 order, the Tahsildar takes a stand that the building in question being one that was residential cum commercial, and the decision relied on by the petitioners namely Padmanabhan v. State of Kerala [2009 (1) KLT295, having been rendered in a case that involved a residential building, could not be applied to the case of the petitioners and hence confirmed the proposal to levy the building tax at the amount of `2,59,200/-. Exhibit P14 order is impugned in the writ petition inter alia on the ground that the distinction sought to be made by the 1st respondent Tahsildar, in connection with the applicability of the decision of this Court in Padmanabhan's case (Supra) W.P.(C)No.13705/2009 4 is one that does not survive in view of the later pronouncement of the Division Bench of this Court in State of Kerala & Ors. v. Southern Fisheries Corporation [2011 (1) KLJ719.

3. I have heard Sri.Reji George, the learned counsel for the petitioners and also Sri.Liju V. Stephen, the learned Senior Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I am of the view that Exhibit P14 cannot be legally sustained. On a perusal of Exhibit P14 order, it is apparent that while it does not expressly take into account the objections raised by the petitioners with regard to the liability to pay building tax in respect of the building, on the contention that there was no additional construction that was effected by the petitioners, the 1st respondent Tahsildar, in the said order, also erred in not following the decision of this Court in Padmanabhan's W.P.(C)No.13705/2009 5 case (Supra). As already noted, the decision of the Single Judge in

Padmanabhan's case (Supra) was since affirmed by the Division Bench in State of Kerala & Ors.'s case (Supra), wherein the specific contention of the Government Pleader, that the earlier decision was rendered in the context of a residential building, whereas the case before the Division Bench involved a commercial building, was rejected by the Court, by observing that in so far as the levy of building tax was concerned, there could not be a difference between residential buildings and commercial buildings for the purpose of determination of the plinth area. In that view of the matter, I feel Exhibit P14 cannot be legally sustained. Resultantly, I quash Exhibit P14 as legally unsustainable. The 1st respondent Tahsildar shall pass fresh orders in the matter taking note of the decisions of this Court referred to above and ascertaining the actual plinth area of the building in question, by excluding the W.P.(C)No.13705/2009 6 areas specified in the judgments referred to above. Fresh orders in the matter shall be passed by the 1st respondent Tahsildar within a period of two months from the date of receipt of a copy of this judgment. It is also made clear that nothing in this judgment shall prevent the 1st respondent Tahsildar from pursuing fresh steps for levying building tax in the event of any additions or alterations made to the building by the petitioners. The writ petition is disposed as above. Sd/- A.K.JAYASANKARAN NAMBIAR JUDGE DSV/01/10 W.P.(C)No.13705/2009 7 W.P.(C)No.13705/2009 8