

M.Narayanan and Another Vs. State of Kerala

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Court : Kerala

Decided On : Nov-25-2014

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

Appellant : M.Narayanan and Another

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR TUESDAY, THE 25^H DAY OF NOVEMBER 2014 4TH AGRAHAYANA, 1936 WP(C).NO. 26168 OF 2010(U) ----- PETITIONER(S): ----- 1. M.NARAYANAN, S/O.CHATHUKUTTY, AGED 63 YEARS, PLATTOTTATHIL HOUSE, GRHSS ROAD KOTTAKKAL, MALAPPURAM, PIN-676 503.

2. RADHA, D/O.P.P.GOVINDAN, W/O.M.NARAYANAN, AGED 57 YEARS, PLATHOTTATHIL HOUSE GRHSS ROAD, KOTTAKKAL, MALAPPURAM, PIN-676 503. BY ADVS.SRI.M.P.RAMNATH SRI.P.RAJESH (KOTTAKKAL) RESPONDENT(S): ----- 1. STATE OF KERALA, REP. BY THE CHIEF SECRETARY TO GOVERNMENT REVENUE (SPECIAL CELL) DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM-695 001.

2. THE DISTRICT COLLECTOR, MALAPPURAM-676 505.

3. REVENUE DIVISIONAL OFFICER, TIRUR, MALAPPURAM DISTRICT-676 101.
4. THE TAHSILDAR, TIRUR TALUK, TIRUR-676 101.
5. THE DEPUTY TAHSILDAR, REVENUE RECOVERY, TIRUR-676 101.
6. THE VILLAGE OFFICER, KOTTAKKAL VILLAGE, TIRUR TALUK MALAPPURAM DISTRICT - 676 101. BY GOVERNMENT PLEADER BOBBY JOHN PULICKAPARAMBIL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/11-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).No. 26168 of 2010 (U) APPENDIX PETITIONERS' EXTS: EXT.P1: TRUE PHOTOSTAT COPY OF SALE DEED NO. 3282 OF 2003 SRO KOTTAKKAL EXECUTED BY 1ST PETITIONER IN FAVOUR OF 2D PETITIONER EXT.P2: TRUE PHOTOSTAT COPY OF THE OWNERSHIP CERTIFICATE FOR THE GROUND FLOOR BUILDING NO. XV/5 OWNED BY THE 1ST PETITIONER ISSUED FROM THE KOTTAKKAL GRAMA PANCHAYATH DATED 19/01-2005 EXT.P3: TRUE PHOTOSTAT COPY OF BUILDING TAX RECEIPT DATED 20/7-2009 FOR THE YEAR 2009/10 ISSUED FROM THE KOTTAKKAL GRAMA PANCHAYATH TO THE 1ST PETITIONER FOR THE GROUND FLOOR BUILDING NO. KP/V/164(15/5) EXT.P4: TRUE PHOTOSTAT COPY OF THE OWNERSHIP CERTIFICATE FOR THE 1ST FLOOR BUILDING NO. XV/5 OWNED BY THE 2D PETITIONER ISSUED FROM THE KOTTAKKAL GRAMA PANCHAYATH DATED 19/01-2005 EXT.P5: TRUE PHOTOSTAT COPY OF BUILDING TAX RECEIPT DATED 20/7-2009 FOR THE YEAR 2009/2010 ISSUED FROM THE KOTTAKKAL GRAMA PANCHAYATH TO THE 2D PETITIONER FOR THE 1ST FLOOR BUILDING NO. KP/V/163(15/5A) EXT.P6: TRUE PHOTOSTAT COPY OF TAX PAID RECEIPT BARING NO. 7208631 ISSUED FROM VILLAGE OFFICE KOTTAKKAL IN FAVOUR OF THE 2D PETITIONER FOR PAYMENT OF TAX FOR 00189 HECTARES (1.89 ARES) IN NEW SURVEY NO. 226/7. EXT.P7: TRUE COPY OF THE ASSESSMENT

ORDER

NO. B2 567/2004/1 ISSUED BY THE DISTRICT ASSESSMENT OFFICER MALAPPURAM TO THE 1ST PETITIONER, FOR THE GROUND FLOOR BUILDING CONSTRUCTED BY HIM , UNDER THE BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE CESS ACT, 1996 EXT.P8: TRUE COPY OF

ORDER

OF ASSESSMENT NO.B2 567/2004/2 ISSUED BY THE DISTRICT ASSESSMENT OFFICER MALAPPURAM TO THE 2D PETITIONER, FOR THE 1ST FLOOR BUILDING CONSTRUCTED BY HER, UNDER THE BUILDING AND OTHER CONSTRUCTION WORKERS WELFARE CESS ACT, 1996 EXT.P9: TRUE COPY OF

ORDER

DATED 25-08-2007 IN PROCEEDING NO. REF: K3-8570/2005 (2) ALONG WITH THE DEMAND NOTICE DATED 25-08-2007 ISSUED BY THE 4TH RESPONDENT TAHSILDAR TO THE PETITIONERS 1 AND 2 JOINTLY. EXT.P10: TRUE COPY OF THE RECEIPT FOR RS. 5,250/- FOR PAYMENT OF 1ST INSTALMENT UNDER KERALA BUILDING TAX ACT 1975 IN PURSUANCE OF EXT.P9

ORDER

, ISSUED BY THE 6TH RESPONDENT ON 17-09-2007 TO THE PETITIONERS. WP(C).No. 26168 of 2010 (U) EXT.P11: THE COPY OF THE RECEIPT FOR RS. 5250/- FOR PAYMENT OF 2D INSTALMENT UNDER KERALA BUILDING TAX ACT, 1975 IN PURSUANCE OF EXT. P9

ORDER

, ISSUED BY THE 6TH RESPONDENT ON 17-12-2007 TO THE PETITIONERS. EXT.P12: TRUE COPY OF THE APPEAL FILED UNDER SECTION 11 OF KBT ACT 1975 BEFORE R3 RDO BY THE PETITIONERS EXT.P13: COPY OF THE

ORDER

DATED 31-10-2007 IN APPEAL PROCEEDING NO. H6621/07/KDIS PASSED BY THE 3D RESPONDENT RDO EXT.P14: TRUE COPY OF THE REVISION FILED BY THE PETITIONERS BEFORE THE 2D RESPONDENT- DISTRICT

COLLECTOR, MALAPPURAM EXT.P15: TRUE COPY OF

ORDER

DATED 7-7-2008 IN REVISION PROCEEDING NO. 1466/2008/D8 OF THE 2D RESPONDENT DISTRICT COLLECTOR MALAPPURAM EXT.P16: TRUE COPY OF THE APPLICATION FILED UNDER SECTION 14 OF THE KERALA BUILDING TAX ACT 1975 BEFORE THE 1ST RESPONDENT EXT.P17: TRUE COPY OF THE

ORDER

DATED 10-7-2009 IN REVISION PROCEEDING NO. 48924/SC2/08/RD PASSED BY THE DEPUTY SECRETARY FOR THE 1ST RESPONDENT EXT.P18: TRUE PHOTOCOPY OF THE APPLICATION DATED 4-8-2009 FILED BY THE PETITIONERS BEFORE THE CHIEF SECRETARY TO GOVERNMENT, REVENUE SPECIAL CELL DEPARTMENT EXT.P19: TRUE PHOTOCOPY OF THE POSTAL ACKNOWLEDGEMENT CARD RETURNED AFTER DUE SERVICE OF EXT. P18 APPLICATION EXT.P20: TRUE PHOTOCOPY OF REVENUE RECOVERY NOTICE ISSUED BY THE 5TH RESPONDENT THROUGH THE 6TH RESPONDENT OF THE PETITIONERS DATED 29-07-2010., RESPONDENTS EXHIBITS: NIL //TRUE COPY// P.A TO JUDGE A.K.JAYASANKARAN NAMBIAR, J.

..... W.P.(C).No.26168 of 2010
..... Dated this the 25th day of November, 2014

JUDGMENT

The petitioners are husband and wife. The 1st petitioner owned 9.50 Ares of land in Sy.No.139/11 and 139/12 of Kottakkal village. On the said land he began construction of a building. The construction was begun at a time when the building rules were not applicable in the Panchayath. When the construction of the building reached a stage where the ground floor was nearing completion, the 1st petitioner by Ext.P1 sale deed conveyed the right to construct the 1st floor of the building to his wife, the 2nd petitioner herein along with the undivided share in the land to an extent of 1.89 Ares. It is stated that, thereafter, the 2nd petitioner continued with

the construction of the 1st floor of the building and completed construction by the year 2004. It is the case of the petitioner that the ground floor and the 1st floor were separately assessed for the purposes of property tax due to the local authority as also for the purposes of the Building And Other Construction Workers Welfare Fund Cess Act. It is also submitted that the ground floor and the 1st floor were allotted separate door numbers by the Kottakkal Grama Panchayath. The building tax assessment of the building, however, was completed by treating the entire building as a single unit and, on finding that the total plinth area of W.P.(C).No.26168 of 2010 -2- the ground floor and the 1st floor exceeded the limit shown in Section 5A of the Kerala Building Tax Act (278.7 sq.metres), the building was subjected to the levy of luxury tax as well. Ext.P9 is the assessment order passed in this regard by the 4th respondent. The petitioner preferred an appeal against Ext.P9 assessment order before the 3rd respondent. The said appeal was however dismissed by Ext.P13 order on the ground that, while preferring the appeal, the petitioners had not paid the luxury tax that was assessed on the building. Aggrieved by Ext.P13 order, therefore, the petitioner preferred a further revision before the 2nd respondent. The 2nd respondent, by Ext.P15 order, dismissed the revision petition preferred by the petitioners on merits. In Ext.P15, it is found that the ground floor and the first floor of the building although, under the separate ownership of the 1st and 2nd petitioners, was connected by a stair case which ran from the living room on the ground floor to the 1st floor. The 2nd respondent, therefore, was of the view that the ground floor and the 1st floor could not be treated as separate buildings for the purposes of separate assessments under the Kerala Building Tax Act. He, therefore, confirmed Ext.P9 order by which the entire building was assessed as a single building for the purposes of building tax. Although, the petitioner preferred a further revision before the 1st respondent, in terms of Section 14 of the Kerala Building Tax Act, the said revision was also dismissed by W.P.(C).No.26168 of 2010 -3- the 1st respondent by Ext.P17 order. In Ext.P17 order, the 1st respondent basically reiterates the same findings as of the 2nd respondent, while dismissing the revision petition. In the writ petition, Exts.P9, P13, P15, P17 orders as well as Ext.P20 revenue recovery notice are impugned.

2. A counter affidavit has been filed on behalf of the 2nd respondent wherein the sequence of events leading to the passing of orders by the 1st and 2nd respondents are narrated. The impugned orders are sought to be justified on the ground that the ground floor and 1st floor of the building, although stated to be under separate ownership of the husband and wife, were essentially a part of the same dwelling unit in that there was no separate entrance to the 1st floor of the building and further, that the stair case to the 1st floor was from the living room on the ground floor. Reliance is also placed on the statement taken from the 2nd petitioner, during the course of the proceedings before the respondent authority, which indicated that till such time as there was any family dispute between the members of the family, they could freely enjoy both the floors as a single home. The reason that primarily weighed with the 1st respondent namely, that the building in question was situated in the property owned by the husband and that the wife did not have any right over the landed property, is W.P.(C).No.26168 of 2010 -4- also highlighted in the counter affidavit.

3. I have heard Sri.P.Ramnath, the learned counsel appearing for the petitioner as also Sri.Bobby John Pulickaparambil, the learned 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 find that Exts.P15 and P17 orders, passed by the 2nd and 1st respondent respectively, suffer from a patent non-application of mind with regard to the issues that are germane to a consideration of the question as to whether, a building that is constructed should be assessed as a single unit or a separate unit for the purposes of the Kerala Building Tax Act. As per the Scheme of the Act, the levy of tax is on a building that is constructed after the cut-off date specified in the Act. While under normal circumstances, the building as a whole would have to be treated as a single unit for the purposes of tax, an exception is carved out in cases covered by Explanation 2 to Section 2(e) of the Act. As per the said explanation, where the building consists of different apartments or flats, owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartments W.P.(C).No.26168 of 2010 -5- or flats shall be deemed to be a separate building. It

is apparent from a reading of the Explanation, therefore, that for the building to be assessed as separate units, it must be shown that:

1. The building consists of different apartments or flats.
 2. The said apartments or flats are owned by different persons.
 3. That the cost of construction of the building was met by all such persons jointly.
5. On the facts of the case at hand, it has to be seen whether the ground floor and first floor of the building could be seen as separate apartments or flats owned by separate persons. As regards the aspect of sharing of the cost of construction by the separate owners, the fact that the 2nd petitioner had, prior to construction of the 1st floor, obtained rights over the portion of the land on which the building was constructed and thereafter, the ownership of the 1st floor of the building also, becomes relevant. Exts.P15 and P17 orders, passed by the 2nd and 1st respondent respectively, do not show any advertence to these aspects while taking a decision adverse to the petitioners and rejecting their revision petitions. In my view, it is incumbent upon the 2nd respondent revisional authority to go in to these matters and W.P.(C).No.26168 of 2010 -6- understand the Scheme of the Kerala Building Tax Act, 1975 as noted above, while taking a decision with regard to the manner in which the assessment of the building has to be done. In that process, he would have to consider the documents produced by the petitioners to establish their ownership over the land and the building, and also such documents as would indicate that the buildings are under separate ownership, and other documents which would show that the cost of construction of the building was also met by them jointly. The 2nd respondent must also necessarily take note of the decisions of this Court in *Nelson Rozario v. State of Kerala* [2013 (1) KLT573, *Varghese v. State of Kerala* [2013 (2) KLT831, *Natarajan v. State of Kerala* [2013 (4) KLT364, *Pavan Kumar v. State of Kerala* [2012 (2) KLT889 and *Tahsildar and another v. Soman Peter* [ILR2014(4) Kerala 327].
6. To enable the 2nd respondent to take a fresh decision in the matter, I quash Exts.P15 and P17 orders and Ext.P20 RR notice and direct him to consider the matter afresh, after affording the petitioners an opportunity of being heard, and

pass orders in the matter within a period of three months from the date of receipt of copy of this judgment. The 2nd respondent shall, while passing orders in the matter, advert to the documents produced by the W.P.(C).No.26168 of 2010 -7- petitioners in support of their contentions and also give reasons for the decision taken by him in the matter. With these directions, the writ petition is disposed. A.K.JAYASANKARAN NAMBIAR JUDGE mns/ W.P.(C).No.26168 of 2010 -8-

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