T.T.Alexander Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/3085

Court : Kerala

Decided On : Nov-25-2014

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

Appellant : T.T.Alexander

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR TUESDAY, THE25H DAY OF NOVEMBER20144TH AGRAHAYANA, 1936 WP(C).NO. 30616 OF2005(T) ---------------------------- PETITIONER(S): --------------- 1. T.T. ALEXANDER, S/O. T.V.THOMMAN, AGED73YEARS, RESIDING AT38239C, THIRUMASSERY KARSHAKA ROAD, ERNAKULAM.

2. T.A. THOMAS, S/O.T.T.ALEXANDER, AGED38YEARS, RESIDING AT38239B, THIRUMASSERY KARSHAKA ROAD, ERNAKULAM. BY ADV. SRI.GEORGE CHERIAN KARIPPARAMBIL RESPONDENT(S): -------------- 1. THE STATE OF KERALA, REPRESENTED BY ITS SECRETARY TO DEPARTMENT OF REVENUE, THIRUVANANTHAPURAM.

2. THE TAHSILDAR, KANAYANNUR TALUK, KOCHI.

3. THE REVENUE DIVISIONAL OFFICER, FORT KOCHI.

4. THE DISTRICT COLLECTOR, ERNAKULAM. BY GOVERNMENT PLEADER SRI.BOBBY JOHN PULICKAPARAMBIL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON2511-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C).NO. 30616 OF2005(T) APPENDIX PETITIONER'S EXHIBITS: EXT.P1: TRUE COPY OF THE

ORDER

OF ASSESSMENT B2-1002/2002 DATED2911.2002 ISSUED BY THE2D RESPONDENT EXT.P2: TRUE COPY OF THE PROCEEDINGS NO.B2-1002/02 DATED2510.2003 OF THE2D RESPONDENT ALONG WITH THE ASSESSMENT

ORDER

B2-1002/2002 DATED2810.2003 EXT.P3: TRUE COPY OF THE PROCEEDINGS NO.B2-1002/2 DATED1607.2004 ISSUED BY THE2D RESPONDENT ALONG WITH THE ASSESSMENT

ORDER

NO.B2- 1002/2002 DATED1607.2004 AND DEMAND NOTICE NO.B2-1002/2002 DATED1607.2004 EXT.P4: TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONERS TO THE3D RESPONDENT. EXT.P5: TRUE COPY OF THE

ORDER

B-48 11/04-K.DIS DATED2711.2004 ISSUED BY THE3D RESPONDENT EXT.P6: TRUE COPY OF THE REVISION PETITION SUBMITTED BY THE PETITIONERS TO THE4H RESPONDENT EXT.P7: TRUE COPY OF THE

ORDER

B10/1100/05-K.DIS DATED0706.2005 ISSUED BY THE4H RESPONDENT EXT.P8: TRUE COPY OF THE SETTLEMENT DEED NO.3929/2000 ENTERED INTO BETWEEN THE PETITIONERS EXT.P9: TRUE COPY OF THE POSSESSION CERTIFICATE DATED1110.2000 IN FAVOUR OF THE2D PETITIONER IN RESPECT OF3760 CENTS OF LAND COMPRISED IN SURVEY NO.555/4 OF ERNAKULAM VILLAGE EXT.P10: TRUE COPIES OF THE LAND TAX RECEIPTS ISSUED BY THE ERNAKULAM VILLAGE OFFICE TO THE PETITIONERS EXT.P11: TRUE COPIES OF THE PROPERTY TAX RECEIPTS

ISSUED BY THE CORPORATION OF COCHIN TO THE PETITIONERS EXT.P12 SERIES: TRUE COPIES OF THE DEMAND AND DISCONNECTION NOTICES ISSUED BY THE KSEB TO CONSUMER NOS.5542014643 AND554204807 EXT.P13 SERIES: TRUE COPIES OF THE CONSUMER BILLS ISSUED BY THE KERALA WATER AUTHORITY TO THE PETITIONERS EXT.P14: TRUE COPY OF THE CERTIFICATE ISSUED BY THE CANARA BANK PANAMPILLY NAGAR BRANCH TO THE2D PETITIONER. RESPONDENTS' EXHIBITS: NIL //TRUE COPY// P A TO JUDGE A.K.JAYASANKARAN NAMBIAR, J.

.... W.P.(C).No.30616 of 2005 .... Dated this the 25th day of November, 2014

JUDGMENT

The petitioners are father and son. They together owned an extent of 7.440 cents of land in Sy.No.555/4 in Ernakulam village. On the said property they put up a building. It is the case of the petitioners that the building has two separate portions, each covered by an independent door number allotted by the Corporation. They have separate electricity connections as also water connections and land tax is also paid separately by the petitioners. While the portions of the building occupied by the petitioners have been treated separately for all purposes, when it came to the building tax assessment, the respondents treated the building as a single unit for the purposes of levy of building tax. It is submitted that although, initially, Ext.P1 order of assessment was passed, that was subsequently modified by Ext.P2 order and later on by Ext.P3 order dated 16.07.2004. In the said order, the building has been assessed as a single unit by overruling the objections of the petitioners that they should be assessed separately in respect of the portions occupied by them. Aggrieved by Ext.P3 order, the petitioners preferred an appeal before the 3rd respondent which came to be dismissed by Ext.P5 order dated 27.11.2004. The petitioners therefore preferred a revision before W.P.(C).No.30616 of 2005 -2- the 4th respondent but the said petition was also rejected by Ext.P7 order dated 07.06.2005. The case of the petitioners in the writ petition is that in both, Ext.P5 and P7 orders, the respondents do not advert to the documents produced by the petitioners to substantiate their contentions with regard to the need for a separate assessment of the individual portions of the building that were owned by them. It is their specific case that the 3rd respondent and 4th respondent, in Ext.P5 and P7 orders, have taken into account factors that are wholly irrelevant for the purposes of deciding the manner of assessment of the building for the purposes of Building Tax Act. It is pointed out that both the said authorities relied on the fact that there was a common approval plan in respect of the building and that the occupancy certificate was also issued in the joint names of the petitioners and further, that the building had only a single soakpit and septic tank, thereby indicating that it was used as a residential building for both the petitioners. It is for these reasons that Ext.P5 and P7 are impugned in the writ petition.

2. I have heard Sri.George Cherian Karipparambil, the learned counsel for the petitioners and Sri.Bobby John Pulikkaparambil, the learned Government Pleader appearing on behalf of the respondents. W.P.(C).No.30616 of 2005 -3- 3. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that Exts.P5 and P7 orders, passed by the 3rd and 4th 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 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 W.P.(C).No.30616 of 2005 -4- different persons.

3. That the cost of construction of the building was met by all such persons jointly.

4. 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 and whether they have jointly contributed to the cost of construction of the building. Exts.P5 and P7 orders, passed by the 3rd and 4th 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 4th respondent revisional authority to go in to these matters and 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 W.P.(C).No.30616 of 2005 -5- 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].

5. To enable the 4th respondent to take a fresh decision in the matter, I quash Exts.P5 and P7 orders, in the appeal and revision petitions preferred by the petitioners, and direct the 4th respondent 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 4th respondent shall, while passing orders in the matter, advert to the documents produced by the 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/