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Dr. T.E. George and anr. Vs. the Tahsildar and Assessing Authority, Kottarakkara

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Court : Kerala

Decided On : Sep-30-1992

Reported in : AIR1993Ker142

Judge : M.M. Pareed Pillay, J.

Acts : Kerala Building Tax Act, 1961 - Sections 6, 6(1), 15(1) and 16; Constitution of India - Article 226

Appeal No. : O.P. No. 11785 of 1992-C

Appellant : Dr. T.E. George and anr.

Respondent : The Tahsildar and Assessing Authority, Kottarakkara

Advocate for Def. : S. Vijayan Nair, Govt. Pleader

Advocate for Pet/Ap. : M. Pathros Matthai, Adv.

Disposition : Petition allowed

Judgement :
ORDER

M.M. Pareed Pillay, J.

1. First petitioner owns a plot of land which he purchased as per Ext. P-1. Second petitioner owns another plot which she purchased as per Exts. P-2 and P-3 sale deeds. Being contiguous lands petitioners constructed buildings in both the plots together now used as hospital. The construction was completed in 1980. Respondent issued notice calling upon the petitioners to file returns under Section 7(1) of the Kerala Building Tax Act in respect of the buildings. Assessment was made with respect to the buildings on 29-6-1985 as evidenced by Exts. P-4 and P-5 and the petitioners were directed to pay Rs. 11,700/- each as tax.

2. Four years later Ext. P-6 notice was issued to the first petitioner demanding payment of additional tax. Petitioners filed Ext. P-7 objection on 19-7-1989. Petitioners were informed that their objections were overruled.

3. Contention of the petitioners is that building tax once assessed under the Act cannot be enhanced on the ground that local authority has enhanced the tax in the subsequent quinquennial revision. The question that arises for consideration is whether building tax once assessed under the Act can be enhanced on account of the increase in the assessment as a result of the quinquennial revision by the local authority.

4. Section 15 of the Act provides forrectification of mistakes in the case of assessments under the Act. Section 15(1) states:

'The appellate authority or the revisional authority may, at any time within three years from the date of an order passed by it on appeal or revision, as the case may be, and the assessing authority may, at any time within three years from the date of any assessment or order passed by it, of its own motion, rectify any mistake apparent from the record of the appeal, revision, assessment or order, as the case may be, and shall, within the like period, rectify any such mistake which has been brought to its notice by an assessee :

Provided that no such rectification shall be made which has the effect of enhancing an assessment or reducing a refund unless the assessee has been given a reasonable opportunity of being heard in the matter.'

From a reading of Section 15(1) it is apparent that if at all the authority has to rectify any mistake in the assessment it has to be done within a period of three years. That would mean that once building tax was assessed rectification of any mistake should be done within a period of three years. Beyond that the authority has no power.

5. Section 16 is not helpful to the respondent to hold that the tax once assessed under the Act can be proportionately increased consequent to the quinquennial revision of the assessment by the local authority. Section 16 only says that in a case where the annual value fixed was found excessive or low it would be open to the authority under the Act to revise the assessment already done. It does not mean at all that on every quinquennial revision the building tax will have to be increased.

6. Section 6(1) states that for determining the capital value for the purpose of the Act the annual value of the building shall be the annual value fixed for that building in the assessment books of the local authority. Section 6(2) makes the position clear that the assessing authority under the Act is not bound to accept the annual rental value fixed by the local authority if it is too low. In such acase the assessing authority with notice can fix the annual value of the building. But in a case where the annual rental value determined by the local authority has been accepted in assessing building tax the assessing authority cannot make any reassessment consequent to revision of tax by the local authority. Re-determination of building tax can only be done in a case where the annual value fixed by the local authority is later found to be excessive or low.

7. Ext. P-13, the certificate issued by the Panchayat shows that the building was first assessed during the year 1980-81 at Rupees 72,000/-. Ext. P-13 further shows that the annual rental value was revised at the time of quinquennial revision in 1983-84 and it was fixed as Rs. 90,000/-. Merely because the annual rental value of a building is enhanced on the quinquennial revision by the local authority the assessing authority under the Act cannot adopt it and change the assessment already effected. As there is no provision under the Act to do so, Ext. P-I 1 order cannot be sustained. Respondent has acted manifestly without jurisdiction.

8. Government Pleader submitted that the impugned order is appealable as provided under Section 11 of the Act and so the O.P. is not maintainable. As the imposition of tax is challenged on the fundamental proposition that the assessing authority lacked jurisdiction to re-assess the tax, the above contention is not tenable. As the challenge against the assessment (Ext. P-I 1) goes to the roof of the jurisdiction of the respondent, existence of alternative remedy is no bar to the remedy under Article 226 of the Constitution. In a case where an authority has acted wholly without jurisdiction existence of alternative remedy is not a bar to the maintainability of the writ petition. In Calcutta Discount Company v. Income-tax Officer, 1961 (2) SCR 241 : (AIR 1961 SC 372), the Supreme Court held:

'The High Courts have ample powers under Article 226 of the Constitution, and are in duty bound thereunder, to issue such appropriate orders or directions as are necessary in order to prevent persons from being subjectedto lengthy proceedings and unnecessary harassments by an executive authority acting without jurisdiction. Alternative remedies such as are provided by the Income-tax Act cannot always be a sufficient reason for refusing quick relief in a fit and proper case.'

9. Ext. P-11 order cannot be sustained. Ext. P-11 is quashed. O.P. is allowed. No costs.

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