Abdul Rasheed Vs. Tahsildar

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Court : Kerala

Decided On : Jul-21-2004

Reported in : 2005(2)KLT819

Judge : G. Sivarajan, J.

Acts : Kerala Building Tax Act, 1975 - Sections 5, 5(1), 5(2), 5(3) and 5(4)

Appeal No. : O.P. No. 19248 of 1998

Appellant : Abdul Rasheed

Respondent : Tahsildar

Advocate for Def. : S. Soman, Government Pleader

Advocate for Pet/Ap. : V.K. Mohammed Youseff, Adv.

Judgement :

G. Sivarajan, J.

1. Petitioners two in number are running a hospital at Perinthalmanna in Malappuram District in the name and style 'Moulana Hospital'. Initially the petitioners constructed a building consisting of two floors for the purpose of conducting the hospital in the year 1992 and the same was assessed to building tax under the Kerala Building Tax Act, 1975 (for short, 'the Act') as per

proceedings dated 24.1.1992. The petitioners had subsequently constructed three more floors to the said building. The plinth area of the entire building including the one which is assessed as per Ext.P1 came to 7119.04 sq. metres and the building tax was assessed at Rs. 8,36,400/-. After deducting the tax assessed as per Ext.P1 Rs. 2,54,050/- and paid the balance tax was assessed at Rs. 5,82,350/-. Being aggrieved by this assessment order (Ext.P2), the petitioners took up the matter in appeal before the 2nd respondent which was rejected by order dated 30.3.1998 (Ext.P3). The same was confirmed in revision by the 3rd respondent as per order dated 19.8.1998.

2. I have heard the learned counsel for the petitioners and the learned senior Government Pleader for respondents. From the pleadings it would appear that the petitioners had initially constructed a two storeyed building, which was assessed as per Ext.P1 order and later constructed 3 more floors totalling 5 floors which was assessed as per Ext.P2 order. From Ext.P2 it is seen that the entire building consisting of 5 floors were measured and the plinth area was ascertained. The assessment was completed by applying the provisions of Section 5(4) of the Act and relevant provision to be applied in Section 5(3) as it stood at the time of making the assessment. Though the petitioners had contended that the building cannot be assessed under Section 5(4) of the Act the said contention was rejected. The contention of the counsel for the petitioners is that there cannot be two methods for assessing a building and that since the earlier construction was assessed by adopting the capital value method the assessment of the entire building by adopting the plinth area is arbitrary and discriminatory by virtue of the constitutional provisions. The counsel, in short, submitted that the assessment can be made only in respect of the portion which is constructed after the amendment made in 1992 by applying Section 5(3) of the Act. The counsel has alternatively submitted that Section 5(4) deals with a situation where the building was constructed after the appointed day, i.e., after 10.2.1992 and if any improvement or alteration is made to the said building thereafter. The counsel submits that admittedly the first two floors of the building have been constructed prior to the appointed day and only additional three floors have been constructed after the appointed day. The counsel submits that in such a case it is only Section 5(3) of the Act that can be applied.

3. The senior Government Pleader, on the other hand, submitted that the petitioners applied for and obtained permit for construction of a 5 storeyed building, that they initially constructed only two floors and the construction of the entire building was completed only after the appointed day and consequently it must be taken that both the initial construction and the additional construction put together was after the appointed date. The senior Government Pleader accordingly submitted that Section 5(4) was rightly applied.

4. I have considered the rival submissions. Section 5(1) is the charging section. Prior to 10.2.1992 i.e., the date from which the Amended Section 5 came into force, in respect of a building the construction of which is completed on or after the 1st day of April, 1973 there shall be charged a tax referred to as building tax where the capital value exceeds Rs. 20,000/- at the rate specified in the Schedule. Under the unamended provisions the assessment has to be made on the capital value of the building. It is in the above circumstances, when the two floors of the building were completed the same was subjected to building tax under the said provision by adopting the capital value method. However, as per Section 5(1) as amended subject to the other provisions contained in this Act, building tax shall be charged based on the plinth area at the rate specified in the schedule on every building the construction of which is completed on or after the appointed day. Here, it must also be noted that the amended Section 5(1) clearly says that it will apply on to building constructed after the appointed day i.e., 10.2.1992, Section 5(2) as amended is not relevant for the purpose of this case. Amended Section 5(3) provides that where any major repair or improvement is made on or after the appointed day to a building constructed before the said date. Building tax shall be payable at the rate referred to in Sub-section (1) on the additional plinth area of the building resulting from such repair or improvement. As already pointed out since two floors of the building have been constructed and the same was assessed to tax under the Act when additional constructions are made to the said building it can be treated as an improvement to the existing building. In such a case it is only Section 5(3) of the Act that can be applied. In this context, it is relevant to note that Section 5(4) is explicit in that it applies only to a case where the plinth area of the building, the construction of which is completed after the appointed day is subsequently increased by new extension or major repair or

improvement building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension, or repair or improvement. Thus it is clear that in order to attract Section 5(4) both the initial construction and the extension/improvement must be after the appointed day. As already noted, the present case is one where initial construction was prior to the appointed day. Therefore, Section 5(4) has no application. Thus the only provision that can be applied is Section 5(3), which provides only for assessment of the additional construction based on plinth area of the building resulting from such improvement.

5. In the instant case having regard to the fact that the first two floors have already been assessed as per Ext.P1 the assessment order the three additional floors constructed after the appointed day i.e., after 10.2.1992 can be assessed only by applying Section 5(3) of the Act as amended. In other words, in the instant case, the three floors subsequently constructed alone can be assessed by applying the plinth area method. The contention of the department that the construction of the five storeyed building with respect to which a plan is approved must be deemed to have completed only after finishing the entire construction of five floors on the facts of this case cannot be sustained.

6. In this view of the matter the assessment order at Ext.P2 and the appellate and revisional orders Exts. P3 and P4 cannot be sustained. In the circumstances, I set aside Exts. P2, P3 and P4 orders to the extent it assessed and sustained the entire building based on the plinth area method. I, therefore, direct the 1st respondent to modify the assessment at Ext.P2 by confining the same to the assessment of the additional construction by applying the plinth area method. To put it differently the initial construction which was subjected to assessment as per Ext.P1 can never form part of the assessment to be made as directed herein above.

Writ Petition is disposed of as above.