

Thomas John Vs. State of Kerala

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SooperKanoon Citation : sooperkanoon.com/903178

Court : Kerala

Decided On : Feb-02-2010

Reported in : 2010(1)KLT705

Judge : S. Siri Jagan, J.

Acts : Kerala Municipalities Act, 1960; ;Kerala Municipality (Amendment) Act, 1994 - Sections 233, 234, 234(2) and 575; ;Kerala Municipality (Amendment) Act, 1999 - Section 76; ;Kerala Buildings (Lease and Rent Control) Act, 1965; ;Taxation and Finance Rules - Rules 9(2), 11 and 24

Appeal No. : O.P. No. 21212 of 2002

Appellant : Thomas John

Respondent : State of Kerala

Advocate for Def. : R. Raya Shenoy,; R. Prasanth Kumar, Advs. and; Dileep Mo

Advocate for Pet/Ap. : L. Muraleedharan and; K.A. Salil Narayanan, Advs.

Disposition : Petition allowed

Judgement :

S. Siri Jagan, J.

1. The petitioner has a building within the jurisdiction of the 2nd respondent - Kayamkulam Municipality. The first floor of that building has been let out to the State Bank of Travancore. The property tax payable for the first floor of the building is the bone of contention between the parties in this Original Petition. Originally, from 1994-95 onwards, the property tax for the building was fixed as Rs. 34,680/- as per the provisions of the Kerala Municipalities Act, 1960 and Rules made thereunder. Pursuant to a revision filed by the petitioner before the 3rd respondent, the same was reduced to Rs. 17, 918/-. Although the petitioner filed an appeal against the same, the same did not succeed and the petitioner was paying property tax in respect of that building at the rate of Rs. 17,918/- per year. By Ext. P1 notice, objections were invited from the petitioner as to why the property tax of the building should not be enhanced to Rs. 70,094/- with retrospective effect from the financial year 1996-97. Against the same, the petitioner filed a revision petition under Rule 11 of Schedule II of the Taxation and Finance Rules framed under the Kerala Municipalities Act, 1960, which continued to be in force despite the bringing into force of the Kerala Municipality Act, 1994, by virtue of Section 575 of the new Act. Ext. P2 is the said revision petition. That revision petition was dismissed by Ext. P3 order. Against Ext. P3 order, the petitioner filed an appeal before the 2nd respondent under Rule 24 of Schedule II of the old Rules. Ext. P4 is that appeal. By Ext. P5 order, that appeal was dismissed on the ground that the petitioner has not remitted the property tax at the revised rate. Since, against that order the petitioner did not have any effective remedy anywhere, the petitioner chose to file a petition before the Director of Municipal Administration, who issued Ext. P6 communication dated 22.6.1999 to the Municipality directing that the enhancement of property tax cannot be retrospective and that the petitioner is liable to pay property tax at the old rate until the Municipality re-computes the property tax in accordance with Rule 9(2) of the Rules. Consequent thereto, the petitioner was continuing to pay property tax at the rate of Rs. 17,918/-. Again, Ext. P7 notice was issued to the petitioner proposing to recover property tax from the petitioner at the rate of Rs. 70,094/- from the year 1998-99 retrospectively. Against the same, the petitioner filed objections, after considering which Ext. P9 order was passed, wherein, while confirming the demand for property tax at the rate of Rs. 70,094/- per year, he was directed to

pay the same only from the second half year of 2001-02. The petitioner filed an appeal before the Municipal Council, which was dismissed by Ext. P10. The petitioner filed Ext. P11 revision before the Government, which was dismissed by Ext. P12. Although Ext. P12 order was passed in a revision petition filed by the petitioner, the Government went into the question as to whether Ext. P6 direction of the Municipal Director is correct and whether the tax can be recovered retrospectively. After holding that the decision of the Municipal Director is not correct, the Government dismissed the revision petition and cancelled Ext. P6 order of the Municipal Director. It is under the above circumstances, the petitioner has filed this Original Petition seeking the following reliefs:

(i) To issue a writ of certiorari or other appropriate writ, or order quashing Ext. P9 illegal order of the 3rd respondent assessing an exorbitant increase of 400% in the existing rate of property tax in respect of building No. XXIII/123 of Kayamkulam Municipality.

(ii) to issue a writ of certiorari or other appropriate writ or order quashing Ext. P12 perfunctory order of the 1st respondent confirming the exorbitant hike of property tax proposed in respect of building No. XXIII/123 of Kayamkulam Municipality with retrospective effect from 1996-1997 wrongly interpreting the provisions of the Kerala Municipality Act, 1994 and Rules made thereunder.

(iii) to issue a writ of mandamus or other appropriate order or direction commanding the 3rd respondent not to reassess the property tax in respect of building No. XXIII/123 of Kayamkulam Municipality until the Government of Kerala frame Rules prescribing method of working out annual value of buildings etc. as provided in Section 234 of the Kerala Municipality Act, stands amended by Section 76 of the Amendment Act, 14/1999.

2. The petitioner raises two contentions. First is that the property tax cannot be demanded retrospectively. The second is that the enhancement of property tax from Rs. 17,918/- to Rs. 70,094/- is arbitrary and unreasonable.

3. Both the Municipality as well as the Government support Ext. P12 order by filing counter affidavits. According to them, it is well within the powers of the Municipality

to recover property tax retrospectively in appropriate cases and that the fixation of property tax as Rs. 70,094/- on the basis of actual rental value of the building is perfectly valid and proper.

4. I have considered the rival contentions in detail.

5. At the relevant time, the property tax was to be levied as per the provisions of the Kerala Municipality Act, 1994. Sections 233 and 234 are the charging sections for property tax. Section 234 contains the method of assessment of property tax. Sub-section (2) of the said Section was amended in the year 1999 with effect from 24.3.1999. Since the period in question is prior to that amendment, we have to consider the rights of the parties on the basis of the unamended Sub-section (2), which reads as under:

234. Method of assessment of property tax:-(1) Every building shall be assessed together with its site and other adjacent premises occupied as an appurtenance thereto unless the owner of the building is a different person from the owner of such site or premises.

(2)(i) Notwithstanding anything contained in Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965) for the time being in force, the annual value of buildings and lands which are occupied by, or adjacent and appurtenant to buildings shall be deemed to be the gross annual rent at which they may reasonably be expected to be let from month to month or from year to year less a deduction, in the case of buildings of twenty per cent of that portion of such annual rent which is attributable to the buildings alone apart from their sites and adjacent lands occupied as an appurtenance thereto:

Provided that:

(a) in the case of:

(i) any Government building; or

(ii) any building of a class not ordinarily let, the gross annual rent of which cannot, in the opinion of the Secretary be estimated, the annual value of the premises

shall be deemed to be six per cent of the total of the estimated value of the land and the estimated present cost of erecting the building after deducting for depreciation a reasonable amount which shall, in no case, be less than twenty per cent of such cost; and

(b) machinery and furniture shall be excluded from valuations under this section:

Provided further that where the annual value of any building or land which is occupied by or adjacent and appurtenant to buildings is attributable partly to the use of such land or building or any portion thereof for the display of any advertisement or advertisements, the value of such land or building for the purpose of assessing the property tax thereon shall be ascertained as if such land, building or portion is not used for the display of such advertisement or advertisements.

(ii) In the alternative, the annual value of a building may be determined based on the letting value calculated on plinth area basis, less a deduction of twenty per cent for depreciation of buildings, subject to such rules as may be prescribed in this behalf.

(iii) In the case of owner occupied residential buildings the annual value arrived at above shall be reduced by a rebate of twenty five per cent in value.

(iv) Where any building is let put to a tenant the actual rent received by the owner is less than the reasonable annual value arrived at in the manner specified above, the annual value of such building shall for purpose of assessment of tax be fixed at the value arrived at and the difference of tax payable by the owner shall be recoverable by the owner from the tenant.

(3) The Government shall have power to make rules regarding the manner in which the person or persons by whom and intervals at which the value of the land, the present cost of erecting the building and the amount to be deducted for depreciation shall be estimated or revised in any case or class of cases to which Clause (a) of the proviso to Sub-section (2) applies.

(underlining supplied)

The unamended Section clearly stipulated the method of calculating the annual rental value of a building for the purpose of assessment of property tax. The contention of the respondents is that they have fixed the property tax payable by the petitioner calculating the annual rental value of the building on the basis of the actual rent received by the petitioner from the State Bank of Travancore to whom that building was let out. I am of opinion that the Municipality could not have validly done that in view of Sub-section (2) as it obtained at the relevant time. As is clear from the said Sub-section (2), the value of buildings and lands shall be deemed to be the gross annual rent at which the buildings may reasonably be expected to be let from month to month or from year to year less deduction as stipulated in the Section. Therefore, what the legislature contemplated is not fixation of annual rental value on the basis of actual rent received by an owner, but on the basis of the annual rent for which the building may reasonably be expected to be let. This is further clear from Sub-clause (iv) where the legislature contemplated a situation where the actual rent received by the owner of the building is less than the reasonable annual value arrived at in the manner specified in the in Sub-clause (i). The fact that after providing for a situation where the actual rent received by the owner is less than the reasonable annual value, the legislature consciously did not provide for a situation where the actual rent received is more than the annual value to be fixed as per Sub-clause (i) of Sub-section (2) would show that what the legislature contemplated was fixation of value of the building not on the basis of the actual rent received by the owner, but on the basis of annual rent at which the building may reasonable be expected to be let. In fact, that was exactly what the Municipality did when they fixed the property tax originally as Rs. 34,680/- and later on Rs. 17,918/- in revision. Therefore, simply because the petitioner was receiving rent more than what was taken by the Municipality as reasonable rental value, the Municipality cannot demand property tax on the basis of the actual rent received by the owner. The parties may have reasons for fixing the rent at a rate above or below the rent prevailing in the area, which cannot be the reasonable rental value as contemplated under the Act. If the legislature wanted to levy property tax on the basis of the actual rent received by the owner for the building, the legislature would have stated so in clear terms. On the other hand, the legislature was quite aware of the fact that the owners may receive rent at a rate

higher or lower than the rent prevalent in the area and provided for a situation where the actual rent is lower than the probable reasonable rent. By doing so, the legislature wanted to see that property tax in a locality shall be uniform, based on the annual rent at which the building may be expected to be let out and not on the basis of the actual rent received. In view of the elaborate provision so made by the legislature this is the only reasonable interpretation of the Section. In fact, a contrary view would make the property tax a tax on the rent rather than a tax on the property, for which the legislature has no power to.

6. Admittedly, the retrospective demand is on the ground that originally the property tax was assessed on the basis of annual rental value fixed under Sub-section 2(i) and not on the basis of actual rent. When, as held by me above, the Municipality could not have fixed the annual rental value on the basis of actual rent received by the owner, the question of revising the property tax on the basis of the actual rent received by the petitioner does not arise. That being so, it is not necessary to consider the question as to whether property tax can be demanded with retrospective effect. Therefore, until the property tax of the petitioner's building was revised on the basis of the quinquennial revision provided for, the petitioner could not have been expected to pay property tax at any rate in excess of Rs. 17,918/-. In any event, in a revision filed by the petitioner against Ext. P9, the Government could not have directed payment of property tax, retrospectively when the Municipality themselves directed the petitioner to pay the enhanced property tax only with effect from 2001-2002.

7. The next question is as to whether the enhancement of property tax from Rs. 17,918/- to Rs. 70,094/- from second half year of 2001-2002 is arbitrary and unreasonable? The increase is almost 400%. It does not require an intellectual exercise to come to the conclusion that such abnormal increase in property tax is arbitrary and unreasonable. The learned Counsel for the Municipality and the Government Pleader would contend that when the petitioner is receiving annual rent corresponding to the revised property tax, there is nothing unreasonable in fixing the property tax based on the actual rent. I do not think that the Municipality can take such a stand contrary to the provisions of the Act. When the Act stipulated that the annual rental value has to be fixed on the basis of gross annual

rent at which the building is reasonably be expected to be let, the Municipality cannot fix the property tax on the basis of the actual rent received by the owner. As I have already mentioned that would make the tax on the rental income rather than the tax on the property for imposing which alone the legislature has power. The Municipality themselves had fixed the property tax on the basis of annual rental value as Rs. 17,918/-. Therefore, quinquennial revision can be only on the basis of the corresponding increase in the annual rental value. Viewing that way, the abnormal increase of 400% is clearly arbitrary and unreasonable. The petitioner also brings to my attention Ext. P16 circular issued by the Government, wherein the Government themselves stipulated that in quinquennial revision of property tax, the increase shall not exceed more than 25%. Of course, counsel for the Municipality points out that, that circular was issued in 1992 under the 1960 Act and on the 1994 Act coming into force, that circular loses its relevance. Even assuming that the contention of the Municipality is correct, I am of opinion that what is contained in Ext. P16 is a reasonable approach, the basis of which can be adopted in all quinquennial revisions of property tax. I am therefore of opinion that the rental value or property tax could not have been increased by more than 25% in quinquennial revision also.

8. In view of my above findings, Exts.P9 and P12 orders are quashed. It is declared that the petitioner is liable to pay increased property tax only with effect from the second half year of 2001-2002. The increase shall only be on the basis of annual rental value to be fixed as directed above. The Municipality shall pass fresh orders in accordance with the findings herein above and re-fix the property tax payable by the petitioner with effect from the second half year of 2001-2002 as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. The petitioner need pay property tax and arrears thereof only in accordance with such demand, without prejudice to the right of the petitioner to challenge that fixation if the same is also unsustainable.

The Original Petition is allowed as above.