



2023:KER:67157

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

THURSDAY, THE 19TH DAY OF OCTOBER 2023 / 27TH ASWINA, 1945

WP(C) NO. 3848 OF 2012

PETITIONER/S:

E.K.ANIL, S/O KUMARAN, RAIN COUNTRY, LAKKIDI VYTHRI
TALUK, WYNAD.

BY ADVS.
SRI.K.M.FIROZ
SMT.M.SHAJNA

RESPONDENT/S:

- 1 TAHASILDAR
VYTHIRI (ASSESSING AUTHORITY), TALUK OFFICE,
VYUTHIRI, KALPETTA, WAYANAD DISRICT. 670576.
- 2 SUB COLLECTOR
MANANTHAVADY, R.D.O OFFICE MANATHANVADY, WAYANAD
DISTRICT 670645.
- 3 DISTRICT COLLECTOR
WAYANAD (REVISIONAL AUTHORITY), COLLECTORATE,
WAYANAD 670645.

OTHER PRESENT:

SRI. ARUN AJAY SHANKAR -GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 19.10.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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JUDGMENT

The writ petition has been filed by the petitioner seeking to call for the records relating to Exts.P2 to P4 and to quash the same.

2. Facts:

The petitioner is the owner of 17 independent buildings having separate building numbers. After completion of construction of five out of 17 buildings, assessment was completed separately in the year 2009 as per Ext.P1. Thereafter, on completion of construction of the remaining 12 independent buildings, as per Ext.P2 assessment was made reckoning the 17 buildings as a single unit. Challenging this, though the petitioner filed an appeal before the second respondent, it was dismissed by Ext.P3 order. Aggrieved by Ext.P3, the petitioner filed a revision before the third



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respondent, which was also dismissed as per Ext.P4 proceedings. Hence, the petitioner has approached this Court challenging Exts.P2 to P4.

3. The first respondent filed a counter affidavit, contending that the Village Officer submitted a proposal before the first respondent to assess building tax of the resort owned by the petitioner in the name and style, "Rain Country Resort, Lakkidi", which was having a total plinth area of 1471.78 sq.mtr. Thereafter, notice was issued to the petitioner and on appearance, the petitioner requested to assess tax on each building separately. On verification of the documents produced by the petitioner, it was found that the petitioner himself is the Managing Director of the said resort and the buildings in the premises are owned by him. It is based on the said findings that building tax was assessed treating the 17 buildings as single unit existing in the premises of the resort. It is further



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contended that the 17 buildings are owned by a single owner, the petitioner, and the said buildings are used as villas for renting out on daily basis to tourists. It is pointed out that those buildings are functioning under a single administration and form part of the hotel and functionally integrated as a single unit. Hence, according to the first respondent, the 17 buildings of the petitioner were assessed to tax as a single unit and accordingly, assessment has been made as per Section 5(5) of the Kerala Building Tax Act, 1975 (for short, "the Act"). The first respondent relied on a decision of this Court in **Lalitha v. State of Kerala** [1994 (2) KLT 66], wherein it is held that a hotel complex, which may consist of numerous buildings like cottages, kitchen complex, shopping arcade and so on or a factory complex with its appendages, may constitute one unit for purposes of assessment. Therefore, according to the first respondent, the



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assessment made is legally sustainable and the writ petition is only to be dismissed.

4. Heard the learned counsel for the petitioner and the learned Government Pleader .

5. The learned counsel for the petitioner submits that the 17 buildings were constructed in the property belonging to the petitioner as independent buildings, which are separately numbered and structurally separated and going by the definition of the term 'building' in Section 2(e) of the Kerala Building Tax Act, 1975, the assessment has to be made separately. Referring to Section 5(1) of the Act, the learned counsel submits that tax shall be charged based on the plinth area at the rate specified in Schedule-I on every building, the construction of which is completed on or after the appointed day; and since all the buildings, though constructed in the property belonging to the petitioner, are structurally different and constructed



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separately, assessment has to be done separately. Referring to a Full Bench decision of this Court in **District Collector, Civil Station, Kakkanad & Others v. V.K.Sreekumari Kunjamma** [2011 (1) KHC 133], wherein the issue considered was whether a building with two residential apartments owned by a same person should be assessed as a single building or should be assessed as two buildings treating each residential apartment as a separate building in the name of the same owner. The learned counsel points out that it is very clearly stated therein how assessments have to be made in respect of building tax and that separate building tax assessments have to be made in the name of very same person for all the buildings constructed or repaired by him, which attract liability.

6. The learned Government Pleader, on the other hand, would submit that going by Section 2(e) of the Act, the building can be assessed



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only as a single unit since the buildings are constructed by the petitioner for better use as a resort for renting out rooms and though it is structurally different, it is functionally a single unit.

7. I have considered the rival contentions raised on both sides. The issue to be decided in the case is whether the buildings constructed by the petitioner can be assessed as a single unit or not. Under Section 2(e) of the Act, "building" is defined as follows;

"2. Definitions.-

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(e) "building" means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure."

Therefore, in the definition, the building means a house. Section 5 of the Act deals with "charge of building tax". Sub section (5) of Section 5



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reads thus;

"5. Charge of building tax.-

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(5) Where there are out-houses, garages or other structures appurtenant to the building for the more convenient enjoyment of the building, the plinth area of such structure shall be added on to the plinth area of the main building and the building tax assessed accordingly:

Provided that the plinth area of a garage or any other erection or structure appurtenant to a residential building used for the purpose of storage of firewood or for any non-residential purpose shall not be added on the plinth area of that building."

8. On a perusal of Section 5(5) of the Act, it is clear that the plinth area has to be assessed on every building, the construction of which is completed on or after the appointed day. Further, it can be seen that for the purpose of assessing building tax, the plinth area has to be assessed on every building constructed added onto the plinth area of the main building when there are out-houses, garages or other structures appurtenant to the building. Here, admittedly, the respondents have no case that the petitioner



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has constructed a main building with other appurtenant buildings for more enjoyment of the main building. All the buildings constructed by the petitioner are separate structures, though the buildings constructed by the petitioner are used for a common purpose as a resort. Assessments are to be made exclusively on the structure of the building. In Ext.P4 order passed by the third respondent, it is clearly stated that the buildings are structurally different, though functionally they are one. For assessment of building tax, if structures are different, the buildings have to be assessed separately and the only exception is that it should not be an appurtenant building for more enjoyment of the main building. In this context, it is appropriate to extract the relevant portion of the Full Bench judgment in **District Collector, Civil Station, Kakkanaad** (*supra*), wherein it is held thus;

“What is clear from the above provisions is that the subject matter of assessment is the building



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and the person to be assessed is the owner and the basis of assessment is the plinth area of the building. The charging section makes it clear that the charge of tax is on the plinth area of every building constructed after the appointed day. Section 7 makes it mandatory that the owner of every building the construction of which or the major improvement to which is made on or after the appointed day, shall furnish to the officer a return in the prescribed form for the purpose of assessment. Section 9 says that if return is correct and complete, the Assessing Officer shall complete assessment based on return filed. What is clear from these provisions is that assessment has to be completed for each and every building constructed and for this purpose, the owner of the building should file as many returns as the number of buildings he has constructed. Therefore, separate building tax assessments have to be made in the name of very same person for all the buildings constructed or repaired by him which attract liability. Since the charging section specifically speaks about levy of tax based on the plinth area of every building constructed, separate assessment is called for in the name of the same owner for the plinth area of every building constructed by him. In the scheme under the Central Income Tax Act, charge of tax is on the total income of a person from all sources and under all heads which are clubbed together for assessment. However, for the purpose of assessment of building tax, there is no provision in the Act to make only single assessment for every financial year in respect of plinth area of all buildings constructed by a person. In the absence of any provision in the Act authorising clubbing of plinth areas of different buildings or common assessment in the hands of a single person for all buildings constructed by him, there cannot be single building tax assessment for all the buildings constructed by him. So much so, the statutory scheme authorises separate assessment for each and every building in the name of the same owner. In other words, same person can be subject to separate assessment for building tax for each and every building constructed by him.



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This proposition of course applies to independent buildings constructed by a man. However, the question to be considered is whether this principle laid down in the decision in LALITHA VS. STATE OF KERALA referred above and followed by the learned Single Judge applies for assessment of two flats or multi-flat apartment building constructed and owned by the same person."

On going through the decision in **District Collector, Civil Station, Kakkanad** (*supra*), it is seen that the assessment has to be completed for each and every building constructed and for this purpose, the owner of the building should file as many returns as the number of buildings he has constructed. Therefore, separate building tax assessment has to be made in the name of the very same person for all the buildings constructed or repaired by him, which attract liability. However, for the purpose of assessment of building tax, there is no provision in the Act to make only a single assessment for the plinth area of the building constructed by a person. The same person can be subject to separate assessment for building tax for each and every building



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constructed by him.

9. Admittedly, the case of the petitioner is that the buildings have been given separate numbers considering the same as separate buildings. The respondents have no case that the buildings are adjoining or they have a common wall. They only say that they are functionally the same. A person may construct separate buildings in the same property, but, there is no provision in the Act for clubbing together these buildings, which are otherwise separate. Though the buildings are constructed for the purpose of renting out, each building is separate and hence, can be rented out individually. The charge is on the building as such and not with reference to its owner. Therefore, the 17 buildings, which are structurally different with separate numbers, have to be assessed separately. Hence, I am of the opinion that the assessment as per Ext.P2 assessing the buildings as a single unit is not



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legally sustainable and is liable to be set aside.

Accordingly, the writ petition is disposed of as follows;

- a) Exts.P2 to P4 are set aside.
- b) The assessing authority is directed to reconsider the assessment treating all the 17 buildings as separate units, within a period of two months from the date of receipt of a certified copy of this judgment.

The petitioner shall produce a certified copy of this judgment along with the writ petition before the competent authority for compliance.

Sd/-

SHOBA ANNAMMA EAPEN

JUDGE

bka/-



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APPENDIX OF WP(C) 3848/2012

PETITIONER ANNEXURES

Exhibit P1	TRUE COPY OF ORDER DATED 28.01.2009 PASSED BY THE TAHASILDAR, VYTHIRI
Exhibit P2	TRUE COPY OF ASSESSMENT ORDER
Exhibit P3	TRUE COPY OF APPELLATE ORDER DATED 09.08.2011
Exhibit P4	TRUE COPY OF REVISIONAL ORDER DATED 29.12.2011
Exhibit P5	TRUE COPY OF RECEIPT DATED 02.09.2011