(2023) 11 KL CK 0211

High Court Of Kerala

Case No: Writ Appeal No. 1949 Of 2023

V.S.Abdul Latheef		APPELLANT
	Vs	
Tahsildar		RESPONDENT

Date of Decision: Nov. 21, 2023

Acts Referred:

- Kerala Building Tax Act, 1975 - Section 2, 2(e), 2(k), 5, 5A

Hon'ble Judges: Dr. A.K.Jayasankaran Nambiar, J; Dr. Kauser Edappagath, J

Bench: Division Bench

Advocate: R.Ranjanie, R.Lakshmi Narayan, V K Shamsudheen

Final Decision: Dismissed

Judgement

Dr. Kauser Edappagath, J.

1. The appellant, the petitioner in WP(C) No.33329/2023, challenges the assessment of building tax and luxury tax under Sections 5 and 5A of the

Kerala Building Tax Act, 1975 (for short, 'the Act') in respect of the building owned by him having separate units with different door numbers as a

single unit instead of assessing separately.

2. The appellant, the title holder of the immovable property having an extent of 8.81 Ares comprised in Old Sy. No.685/3A of Vattekunnamkara,

Thrikkakkara North Village, entered into a joint venture agreement with Tulsi Developers India Pvt. Ltd. to construct a multi-storied apartment

complex. The company formulated a scheme for developing the property by constructing an apartment complex with 11 floors named â€œTulsi

Nestâ€, consisting of 36 residential apartments as per the building permit issued by Kalamassery Municipality. The construction of the apartment

complex was carried out and completed in terms of the memorandum of understanding dated 10/3/2016 executed between the appellant and the

company. As per the understanding, 11 apartments were set apart in favour of the appellant. Accordingly, after construction, those 11 apartments

were allotted to the appellant, and he paid property tax in respect of those apartments. Separate building numbers were also allotted to each

apartment. According to the appellant, he sold 1 apartment out of 11 bearing door No.XXXIX/196-K situated on the basement floor to one Asma

Assis on 5/11/2022.

3. The appellant submitted a return in Form No.II as contemplated under the Act for assessment of the individual apartments for building tax

separately. However, the 1st respondent assessed all the 11 apartments belonging to the appellant together for the purpose of building tax and luxury

tax under Sections 5 and 5A of the Act. The 1st respondent issued Ext.P7 order imposing a building tax of `3,40,515/- and an additional cess of

`6,810/-. The 1st respondent also issued Ext.P9 order imposing luxury tax @`12,500/- each financial year. The appellant challenged Exts.P7 and P9

before the learned Single Judge on the ground that the 1st respondent ought to have considered the residential apartments in the name of the appellant

as separate units by applying the provision of Explanation 2 to Section 2(e) of the Act. The learned Single Judge dismissed the writ petition, holding

that if a person is the owner of more than one apartment in a building, then the plinth area of all the apartments is to be taken together for the purpose

of levying building tax and luxury tax. Being aggrieved by the judgment of the learned Single Judge, the appellant is before us.

4. We have heard Smt.R.Ranjanie, the learned counsel for the appellant and Sri.V.K.Shamsudeen, the learned Senior Government Pleader for the

respondents.

5. The learned counsel for the appellant submitted that the apartments owned by the appellant are independent units, separate from each other and as

such, each apartment ought to have been assessed as a separate building for the purpose of Section 5 and Section 5A of the Act by applying

Explanation 2 to Section 2(e) of the Act. It was also contended that if the assessment is made separately for each unit, the question of attracting

luxury tax as envisaged under Section 5A of the Act will not arise since the plinth area of the individual apartment unit is less than 278.7 sq. metres.

On the other hand, the learned Government Pleader submitted that the assessing authority was absolutely justified in taking all the 11 flats owned by

the appellant together for the purpose of assessing building tax and luxury tax. Reliance was placed on the dictum laid down by the Apex Court in

State of Kerala and Others v. A.P.Mammikutty [2015 (3) KHC 794 (SC)].

6. It is not in dispute that the appellant owns 11 apartments in the apartment complex 'Tulsi Nest' together with rights in 11 covered car parking areas,

common areas, facilities, and amenities. The total plinth area of the 11 apartments would come to 1162 sq. metres. The question that falls for

consideration in this writ appeal is whether the assessing authority was justified in levying the building tax and luxury tax by clubbing the plinth area of

all the 11 apartments owned by the appellant instead of assessing each unit separately.

7. Section 5 of the Act deals with the charge of building tax, whereas Section 5A deals with the charge of luxury tax. Under both these provisions, the

building tax, or the luxury tax, is charged based on the plinth area of the building. The luxury tax is chargeable only to residential buildings, while the

building tax is chargeable to residential as well as non-residential buildings. The luxury tax applies to residential buildings with a plinth area of 278.7 sq.

metres or more completed on or after 1st day of April 1999. The question above must be answered with reference to the definitions of â€œbuildingâ€

and â€œplinth areaâ€, which is the basis of charge under the charging Sections 5 and 5A of the Act.

8. Section 2(e) of the Act defines â€œbuildingâ€ thus:

Â â€œ2(e) â€œbuildingâ€ 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.

Explanation 1. - In the case of buildings constructed for providing housing accommodation for workers and their families residing in plantations, in pursuance

of

Section 15 of the Plantations Labour Act, 1951 (Central Act 69 of 1951) or buildings constructed under the Government of India Subsidised Housing Scheme for

industrial workers, each part of a building providing or intended to provide accommodation for a worker or a worker and his family shall be deemed to be a

separate building.

Explanation 2.- Where a 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 apartment or flat shall be deemed to be a separate buildingâ€

9. Section 2(k) of the Act defines the â€œplinth areaâ€ thus:

â€œ2(k) â€œplinth areaâ€ means the area included in the floor of a building and where a building has more than one floor the aggregate area included in all

the floors together.

Provided that in the case of a building referred to in the Explanation 2 to clause (e), the plinth area shall be calculated separately.â€

10. â€˜Buildingâ€™, as defined under Section 2(e), covers all the buildings in the literal sense, and besides it, it includes every structure or part of a

building. The plinth area, which is the basis of assessment under Section 2(k), takes in the floor area of the building, and where the building has more

than one floor, the aggregate area included in all the floors taken together. Going by the definition of the 'building' contained in Section 2(e), read with

the definition of 'plinth area' under Section 2(k) and the charging Sections 5 and 5A, a multi-storied building or a building with different residential or

commercial apartments must be assessed as a single unit on the total plinth area which includes the plinth area of all the floors of the building.

However, the assessment must be necessarily in the name of the owner or owners of the building if several persons jointly own it. Two exceptions are

provided in the Act against single assessment of multi-flat apartments, whether residential or commercial. Explanation 2 to Section 2(e), which is

relevant here, specifies that where a building consists of different apartments or flats owned by different persons and the cost of construction was met

by all such persons jointly, each such apartment or flat shall be deemed to be a separate building. The said exception provides for separate assessment

of flats or apartments of a multi-apartment building in the name of each owner of the flat or apartment.

11. A plain reading of Explanation 2 to Section 2(e), along with Sections 5 and 5A of the Act, makes it clear that if a person is the owner of more than

one apartment in a building, which consists of number of apartments owned by different persons and the cost of construction was jointly met by all

persons, then the area of all those apartments owned by him is to be taken together for the purpose of levying building tax and luxury tax. What is

relevant is the ownership of the apartment(s)/building. The appellant had assigned undivided right over the land to the builder. The assignment of the

right in the land by the owner to the builder to build the flats on condition of constructing and delivering few flats to the owner of the land would

amount for sharing of cost of construction as stated in the Explanation 2. The appellant's contention that irrespective of the number of owners owning

apartment buildings, each flat is to be assessed as a separate building by virtue of Explanation 2 to Section 2(e) cannot be accepted. It is clear from

Explanation 2 to Section 2(e) that where a building consists of different apartments or flats owned by different persons, the ownership is critical for

assessing building tax or luxury tax. If a single owner owns more than one flat in the apartment complex, whether it is situated on the same floor or

different floors, all those flats owned by him are to be taken together for assessment of building tax or luxury tax. The Apex Court in

A.P.Mammikutty (supra) considered the scope of Explanation 2 to Section 2(e) of the Act in the context of Section 5A. It was held that the entire

plinth area in the residential building owned by a single owner has to be aggregated for the purpose of levying luxury tax irrespective of whether the

residential building consists of one floor or is two-storied or three-storied or consists of multiple flats or apartments. It was further held that if a person

is the owner of a plinth area of 278.7 sq. metres or more in one building, even if it consists of separate or distinct apartments, he would be liable to pay

the luxury tax under Section 5A of the Act. The said dictum squarely applies in the case of building tax under Section 5 of the Act as well.

The assessing authority, thus, has rightly clubbed together the area of all 11 flats under the ownership of the appellant to assess and levy building tax

and luxury tax, which the learned Single Judge rightly upheld. We find no illegality or impropriety in the impugned judgment. Writ appeal accordingly

stands dismissed.