(2000) 03 KL CK 0019

High Court Of Kerala

Case No: O.P. No. 9680 of 1998.

Biju Mathew		APPELLANT
	Vs	
Corporation of Cochin		RESPONDENT

Date of Decision: March 22, 2000

Acts Referred:

- Kerala Municipalities Act, 1994 - Section 233, 239

Citation: (2000) 2 KLJ 68

Hon'ble Judges: G. Sivarajan, J

Bench: Single Bench

Advocate: S.A. Nagendran, Premjit Nagendran and Joy Thattil, for the Appellant; George Cherian (Thiruvalla), for the Respondent

Judgement

G. Sivarajan

1. The matter arises under the Kerala Municipality Act, 1994 (hereinafter, referred to as "the Act"). The issue relates to the grant of vacancy remission u/s 239 of the Act. The petitioner is the Managing Director of a company, inter alia, engaged in the business of construction of buildings and their sale. The company constructed a building having 61 shops/offices out of which 59 were given door numbers by the first respondent. According to the petitioner, due to the recession in the real estate market the sale of a majority of the shops/ offices did not fructify and are still lying vacant. The first respondent has assessed the said buildings to property tax as per Ext. P-l and similar notices. Since the petitioner was unable to sell or let put the newly constructed shops/ offices, he issued notices u/s 239 to both the respondents stating that the buildings are vacant and requested for remission of property tax. One such intimation is produced as Ext. P-2. It is also stated that the petitioner had preferred another letter dated 27-3-1998 pointing out that they do not expect to let out or. sell/the building at least till 30-9-1998. During the pendency of the said applications (Exts. P2 and P3) the petitioner filed writ petition, O.P. No. 6614 of 1998 and this Court by judgment dated 2-4-1998 directed the Secretary of

the first respondent Corporation to dispose, of the same in accordance with law. Accordingly the Secretary of the Corporation by Ext. P-4 order disposed of Exts. P-2 and P-3 applications. The claim for vacancy remission was rejected stating that the provisions of Section 239 of the Act did not apply to the case of the petitioner. It is this order which is challenged in this Original Petition. The reason stated by the Secretary of the first respondent Corporation for rejecting the request made in Exts. P-2 and P-3 is that vacancy remission u/s 239 of the Act can be granted only to a building which is ordinarily let or occupied by the owner himself which falls vacant and unlet for a period of six months and that in the instant case the building with respect to which the petitioner has claimed vacancy remission had never been let out or occupied by the owner and therefore Section 239 of the Act did not apply.

2. A counter-affidavit is filed on behalf of the respondents. It is stated therein that in order to attract the provisions of Section 239 of the Act, it should be one ordinarily let or occupied by the owner and should become vacant for any half year or part thereof. According to the respondents, the premises under reference did not belong to the class of buildings ordinarily let or occupied by the owner and consequently did not attract the said provisions of law. It is in those circumstances the petitioner''s claim for vacancy remission of tax was found to be inadmissible u/s 239 of the Act. It is also stated that the petitioner has got an alternate remedy u/s 58 of the Act.

3. Learned counsel appearing for the petitioner submits that the provisions of Section 239 of the Act which deals with vacancy remission allows remission of tax for that half year during a building occupied by the owner falls vacant. He also submitted that the purpose of the said section is to grant remission of tax for a building which falls vacant for a half year that the reasoning of the authorities that the section has application only to a building which has beneficially let out or occupied by the owner himself for his own purposes is not justified having regard to the purpose with which the section is enacted. Counsel submits that under the section the possession and occupation of the building by its owner and the building lying vacant for the requisite period are sufficient to grant vacancy remission for that period, He, in support of the contentions, relied on the meaning of the word "occupier" u/s 2(25) of the Act, the decisions of the Supreme Court in Bimla Devi Vs. First Additional District Judge and Others, , Babu Singh Chauhan Vs. Smt. Rajkumari Jain and Others, and also in Liquidator of Mahamudabad Properties P. Ltd. Vs. Commissioner of Income Tax, West Bengal-II, . Learned counsel appearing for the respondents, on the other hand, submitted that Section 239 is very clear and it is intended to grant remission of tax only in respect of buildings which are initially let out or used by the owner himself and subsequently falls vacant for more than six months. The counsel submitted that the buildings in question were constructed by the petitioner as a builder for the purpose of sale and not for the purpose of either letting it out or for his own use. He accordingly submitted that the authority was perfectly justified in declining relief u/s 239 of the Act.

4. In order to decide the question as to whether the respondents were justified in declining the relief sought for by the petitioner, evidenced by Ext. P-4, it is necessary to understand the scope of the provisions of section 239 of the Act. Section 239 reads as follows:

239. Vacancy remission - (l)When any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for a half-year the owner shall be entitled to a remission of tax for that half-year.

(2) If the owner had already paid the tax in respect of a half-year in which a remission is due, he shall be entitled to get either re-fund or shall be entitled to get the amount adjusted in the tax for the succeeding half-year.

(3) (a) No such remission shall be admissible unless the owner of the building or his agent has previously thereto delivered notice to the secretary.

(i) that the building is vacant and unlet, or

(ii) that the building will be vacant and unlet from a specified date either in the half-year in which notice is delivered or in the succeeding half-year.

(b) Every notice under clause (a) shall expire with the half-year succeeding the half-year during which it is so delivered and shall have no effect thereafter.

The section says that when any building whether ordinarily let or occupied by the owner himself has been vacant and unlet for a half year, the owner shall be entitled to a remission of tax for that half-year. It shows that the remission of tax is for the vacancy of the building for a continuous period of six months. Of course, the section uses the expression whether ordinarily let or occupied by the owner himself. The use of the above words has created the controversy. What does the above expressions convey? Does it mean that in order to get the remission of tax the building must be either let or occupied by the owner himself prior to the vacancy? What is the meaning of the word ''occupied'' used in that context? Does it mean the personal occupation or user by the owner himself or does it connot ''mere possession'' of he building as its owner?

5. A fair reading of the section gives me the impression that the said expressions ''whether ordinarily let or occupied by the owner himself do only convey the status or character of the user to which the building can be put. The word ''occupied'' in the context of the expressions has been vacant and unlet'' can only mean the actual user of the building. The expression has been vacant'' used in the section is also significant. ''Vacancy'' is a state of non-occupation. It implies nonuser. When both the words ''occupied'' and ''vacant'' occur in the section, it is clear that the said expressions in the context convey different meaning. So understood the word ''occupied'' can only mean actually used.

6. Now the stand of the Corporation is that the use of the expressions "whether ordinarily let or occupied by the owner himself as also "vacant and unlet" in the section would indicate that vacancy remission is available only to a building which is constructed for own occupation or for letting and not to a building constructed and kept for sale. Their further stand is that prior to the vacancy the building should have been put to actual use by the owner himself or by the tenant inducted by him. In order to see whether such a view is justified. It is necessary to gather the intention of the legislature in enacting the Section for grant of vacancy remission. Section 230 of the Act enables every Municipality to levy a property tax. Section 233 of the Act provides that where a Council of a Municipality by resolution determines to levy property tax, such tax shall, unless, exempted by or under this Act or any other law, be levied on all buildings and lands within the municipal area. Sub-sec. (2) thereof says that the property tax under sub-section (1) may comprise of a tax for general purposes and a service tax may comprise of a water and drainage tax, lighting tax and sanitary tax. Sub-section (3) provides that these taxes shall be levied at such percentage of the annual value of buildings or lands which are occupied by or adjacent and appurtenant to buildings or both as may be fixed by the Council. Thus, from the provisions of section 233 it is clear that the property tax is imposed under sub-section (1) mainly for the purposes of providing water and drainage, lighting and sanitary facilities. The property tax collected under this provision is used towards expenses for the general purposes of water and drainage, lighting and sanitation. In other words, it is not solely for the purpose of providing the said facilities to the particular tax prayer.

7. Now, coming to the provisions of Section 239 of the Act, if the said section is understood in the context of provisions of Section 233, it is clear that if a building to which tax is levied u/s 233 lies vacant for more than six months, the user of the aforesaid three facilities by the owner of the building for a continuous period of six months would be nil. Though, as already stated, tax is collected for the general-purposes of water, lighting and sanitary and not for providing the said facilities to the particular tax prayer, the nonuser of the said facilities by a house owner is a relevant consideration. It is for that reason, the legislature thought that a remission of tax must be given to the owner of a building which remains vacant for more than six months continuously. If the intention in enacting provisions of Section 239 of the Act is to grant a remission of tax to all buildings which lie vacant for more than six months, the Legislature could have couched the provisions in such a way as to avoid any ambiguity. The ambiguity is caused in the provisions of Section 239 only because of the use of the words "whether ordinarily let or occupied by the owner himself. Section 239(1) should have been like this. "When any building has been vacant for a half-year, the owner shall be entitled to a remission of tax for that half-yer. The use of the expressions "whether ordinarily let or occupied by the owner himself as also "vacant and unlet" in that event would be a surplusage. The Legislature cannot be understood to have used the words "whether ordinarily let or occupied by the owner himself without any purpose. To me, it appears that the said words are used only to clarify that the mode of user of the building by its owner is not material and that what is

relevant is the vacancy/nonuser of the building which is in the possession of the owner himself. It does not convey any thing more. According to me, the above interpretation of Section 239 would advance the purpose with, which the said Section is made. In other words, the purposive approach will reveal that the intention of the Legislature is to give a remission of tax to a person who does not put to actual use of the building which is subjected to property tax for continuous period of six months which will certainly have a bearing on the expenses to be incurred for water and drainage, lighting and sanitary purposes.

8. That apart, there is no rationale for limiting the benefit of tax remission only to buildings which were let out or occupied by the owner himself prior to its falling vacant. Section 239 also does not give any indication that the vacancy remission is granted only to buildings used for residential purposes either by its owner or by a tenant. In other words, the section applies to all buildings irrespective of the nature of the user to which it is put to. In such circumstances, if an interpretation is placed to Section 239 in the manner done by the respondents, namely, that in order to get the benefit of Section 239 the building in question must be either let out or used by the owner himself prior to its falling vacant. It will lead to unjust results. It Will also amount to discrimination. The remission of tax is to a building which is vacant and the same is given to the tax prayer. To deny the benefit by stating that the building has not been put to use by the owner earlier or that the building is constructed for sale and not for own purposes will be arbitrary, irrational and against the object of the Section. In the above circumstances I am of the view that the interpretation placed by the respondents to the provisions of Section 239 for denying relief to the petitioner cannot be sustained.

9. Now, coming to the facts of the case the petitioner is the Managing Director of a Company engaged in the business of construction of buildings for sale. The company has constructed 61 shops/office buildings. Some of them were sold and some of them were lying vacant due to recession in the real estate market. If the Company is not able to sell the said shop buildings, it may be open to the company to let it out or to occupy itself. It is for them to decide. The petitioner contends that since the buildings in question are in the possession of the petitioner for want of purchasers, certainly it can be said that the building is occupied by the owner himself. In the view I have already taken in the preceding praragraph, it is unnecessary to consider the said contention. For that reason, I do not propose to consider the decisions rendered by the Supreme Court under the Rent Control enactment and the Indian Income Tax or the dictionary meaning of the word "occupied" relied on by the petitioner. The word "occupied" used in section 239, as already observed, means actual user and not mere possession or control. I do not think it necessary to elaborate further. It is hereby declared that in a case where a building which is subjected to property tax u/s 233 of the Act has been vacant and unlet for a half year, the owner of the building shall be entitled to the benefit of Section 239 provided due intimation in that regard is given as prescribed and that it cannot be denied for the reason that the said building was not put to use earlier or that the building was constructed for

sale. The only question to be considered is as to whether the building is vacant for a half year and that the claim is made by the owner of the building within the prescribed period, if any. In the light of the above, Ext. P-4 order passed by the first respondent cannot be sustained. I accordingly quash Ext. P-4.1 direct the first respondent to dispose of the applications submitted by the petitioner for remission u/s 239 of the Act afresh in accordance with law and in the light of the interpretation placed on Section 239 of the Act in this judgment.

The Original Petition is disposed of as above. In the circumstances of the case, the parties will bear their respective costs.