T. Balan and Others Vs Assistant Collector and Others

Court: High Court Of Kerala

Date of Decision: Feb. 5, 1990

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 115
Kerala Building Tax Act, 1975 â€" Section 12, 12(1), 12(3), 13, 13(1)

Hon'ble Judges: K.P. Radhakrishna Menon, J

Bench: Single Bench

Advocate: C.K. Sivasankara Panicker and S. Radhakrishnan, for the Appellant; Thomas Varkey, Government Pleader, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Radhakrishna Menon, J.
The Respondents in Civil Miscellaneous Reference No. 1/85 of the District Court, Kozhikode are the revision

Petitioners. The District Court, by the order under challenge has answered the reference u/s 12 of The Kerala Building Tax Act, 1975(Act

7/1975,) for short, the Act against the Petitioners.

2. The learned Government pleader raised a preliminary objection that the revision is not maintainable. Dilating on this point he submitted that the

decision of the District Court cannot be said to be a ''case decided'' within the meaning of Section 115 CPC in view of the provisions contained in

Sub-section (3) of Sections 12, 13 and 14. The scope and effect of these sections therefore require to be considered. Sub-section (3) of Section

12 says that the Appellate Authority, on receipt of the decision of the District Court on the question of law referred to it u/s 12(1) , shall pass the

final order on the appeal in conformity with such judgment. Section 13 empowers the District Collector to revise the order of the Appellate

Authority either suo motu or on application by an aggrieved party. The District Collector however, has no power to revise the order of the District

Court u/s 12(3). Section 14 provides that the Government may, on application by any person aggrieved, call for and examine the record of any

order passed by the District Collector suo motu u/s 13(1), for the purpose of satisfying themselves as to the propriety or regularity of such order

and pass such order in reference thereto as they think fit. This section empowers the Government to call for and examine the records of any order

passed by the District Collector u/s 13(1), not for considering whether the District Collector was justified in accepting the judgment of the District

Court u/s 12(3) but only for the limited purpose of satisfying themselves as to the propriety or regularity of such order and pass such order in

reference thereto as they think fit. For instance if the District Collector refuses to accept the judgment of the District Court u/s 12(3) and passes an

order u/s 13(1) which reflects his own view on the question of law referred to the District Court, then that order must be held to be an improper

order warranting interference u/s 14. In exercise of this power the Government therefore cannot revise the order of the District Judge. In other

words neither the District Collector nor the Government can revise the order of the District Court u/s 12(3). The order of the District Court u/s 12

therefore must be treated as a ''case decided''. That a case decided by a court subordinate to the High Court is revisable is a proposition well

established. The order of the District Court under Section-12 therefore is revisable u/s 115 CPC The preliminary objection as to the maintainability

of the revision therefore is not sustainable. The same therefore is rejected.

3. Coming to the merits of the case. The building in question is owned by the Petitioners. The building admittedly was constructed after the first day

of April, 1973 and therefore the same is liable for building tax.

4. According to the Petitioners the building is owned by them in co-ownership and therefore the same must be deemed to consist of seven

separate buildings owned by them separately, for the purpose of levying the tax. The question thus arising for consideration is: Is the building which

is a cinema theatre, liable to be assessed as one independent building or as separate buildings, as contended for by the Petitioners. The answer to

this question depends upon the construction of the relevant sections including the charging section contained in the Act.

5. Section 5 is the charging section. It provides that subject to the other provisions contained in this Acts there shall be charged a tax (hereinafter

referred to as (" building tax") at the rate specified in the Schedule in respect of every building the construction of which is completed on or after

the 1st day of April 1973, and the capital value of which exceeds seventy-five thousand rupees. The other Sub-sections are not relevant and

therefore they are not dealt with here. Section 6 provides the guidelines to determine the capital value. This section says that for determining the

capital value for the purpose of levying the building tax, the annual value of a building shall be the annual value fixed for that building in the

assessment books of the local authority within whose area the building is situate. If the assessing authority is of opinion that the annual value fixed

for a building in the assessment books of the local authority is too low, it may, after giving the person or persons affected thereby an opportunity of

being heard, fix the annual value of the building, by itself. In determining the annual value under Sub-section (2) the assessing authority shall have

regard to the following factors, namely:

(a) the location of the building;

(b) the nature and quality of the structure of the building;

(c) the capability of the building for profitable use;

(d) amenities provided in the building;

(e) access to the building from public roads or water ways;

(f) the value of the land on which the building is constructed;

(g) the estimated cost of construction of the building;

(h) such other factors as may be prescribed.

It is thus clear that the annual value of the building for the purpose of levying building tax is determined not with reference to the actual investment

made by the Assessee but only with reference to the various factors made mention of under Sub-sections (1), (2) and (4) of Section 6 referred to

above.

6. The cumulative effect of the charging section and Section 6 is that every building that is constructed after 1st day of April 1973 and the capital

value of which exceeds rupees seventy-five thousand is liable to building tax. What then is a building for the purpose of levy of the tax. The word

building"" is defined in the Act and therefore the building which would be made the subject-matter of the assessment shall satisfy the requirements

prescribed by the definition. I shall now read the definition:

Section 2(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."" Of the two explanations appended to this definition. Explanation 2 is relevant. It reads:

Where a building consists of different apartments of 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 building.

This explanation says that where a building consists of different apartments or flats owned by different persons and the cost of construction of such

building was met by such persons jointly, each such apartment or flat, by a fiction, has been treated as a separate building. It is thus clear that but

for this fiction introduced by this Explanation a building which consists of different apartments or flats owned by different persons, as they

admittedly have met the cost of construction jointly, also would have been treated as a single unit for the purpose of levying the building tax. In

other words this Explanation suggests that no other building the cost of construction of which is met jointly by several persons, can be treated as

separate units for the purpose of levying the building tax. That is the intention of the legislature is clear from this Explanation. If that be the position

the building in dispute which was constructed for the purpose of using it as a theatre necessarily has to be treated as one unit for the purpose of

levying the tax even assuming the cost of construction of the building is met jointly by the Petitioners. The scheme of the Act, in my view, does not

warrant a decision to the contra. That being so, the District Court in my view has rightly held that the building shall be assessed as one unit and not

as different units as contended for by the Petitioners.

C.R.P. for the reasons stated above is dismissed. No cost.