

W.P.(C) No. 30074/2016

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 29<sup>TH</sup> DAY OF JULY 2022 / 7TH SRAVANA, 1944

WP(C) NO. 30074 OF 2016

PETITIONER/S:

P.K.SHANMUGHAN  
PETTIKATTIL HOUSE, LOKAMALLESWARAM, CHATHEDATHU  
PARAMBU, KODUNGALLUR.

BY ADVS.

SRI.A.A.ZIYAD RAHMAN

SRI.LAL K.JOSEPH

SRI.V.S.SHIRAZ BAVA

SRI.M.B.SOORI

RESPONDENT/S:

- 1 THE DISTRICT COLLECTOR, THRISSUR  
AYYANTHOLE, THRISSUR – 677 610.
- 2 THE REVENUE DIVISIONAL OFFICER,  
THRISSUR – 677 610.
- 3 THE TAHSILDAR  
KODUNGALLUR TALUK, KODUNGALLUR – 677 609.  
BY ADV GOVERNMENT PLEADER

SMT.RESMITHA R CHANDRAN,GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29.07.2022,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**SHAJI P. CHALY, J.**

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**W.P.(C). No. 30074 of 2016 (H)**  
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Dated this the 29<sup>th</sup> day of July, 2022.

**JUDGMENT**

The subject matter of the writ petition arises under the Kerala Building Tax Act, 1975 ('Act, 1975' for short).

2. Brief material facts for the disposal of the writ petition are as follows:

The petitioner is the owner of a residential building within the limits of the Tahsildar, Kodungallur Taluk, Thrissur District and situated in survey No. 213/8 of Lokmalleswaram Village, Kodungallur Taluk, having a total plinth area of 201.75 sq. meters.

3. The case of the petitioner is that as per the provisions of the Act, 1975, the petitioner is liable to pay building tax only in accordance with the prescription contained under the Act. However, as per Ext. P1 assessment order bearing No. C5-6351 dated 06.10.2006, the Tahsildar, Kodungallur Taluk, respondent No.3, has passed an order assessing an amount of Rs.5400/- treating the petitioner's building as a residential building with a total plinth area

of 201.75. sq meters .

4. Being aggrieved, the petitioner has filed Ext. P2 appeal before the Revenue Divisional Officer, Thrissur. The appellate authority, after hearing the petitioner, as per order dated 01.02.2008, remanded the matter to the Tahsildar for fresh disposal. After remand, Ext. P3 order dated 19.04.2008 was passed by the Tahsildar re-assessing the tax at an amount of Rs. 18,000/- by treating the building in question as a non residential building, since the building is given on rent for residential purposes.

5. Challenging Ext. P3 order, petitioner preferred Ext. P4 appeal dated 14.05.2008 before the appellate authority. In Ext. P4 appeal, the petitioner has taken a contention that the order passed by the Tahsildar is unsustainable, since the building is a residential building as provided under Section 2(I) of the Act, 1975. However, the Tahsildar has assessed the building including garage.

6. It is also pointed out that the assessment was done by the Tahsildar on remand by the appellate authority re-assessing the tax to Rs.18000/- for the reason that the residential building is given on rent

for residential accommodation and therefore, it is a commercial activity and the assessment is to be made as if the building is a commercial one.

7. However, the appellate authority dismissed the appeal filed by the petitioner as per Ext. P6 order dated 19.09.2009. Though a revision was filed before the District Collector, after remitting 50% of the amount, the District Collector also confirmed the order passed by the Tahsildar and the appellate authority as per Ext. P9 order dated 04.08.2016. It is, thus, challenging the legality and correctness of the orders passed by the statutory authorities, the writ petition is filed.

8. The paramount contention advanced by the learned counsel for the petitioner is that a residential building in contemplation of Section 2(l) means 'a building or any other structure or part thereof built exclusively for the residential purpose including out-houses or garages appurtenant to the building for more beneficial enjoyment of the main building but does not include hotels, boarding places, lodges and the like'.

9. Therefore, according to the petitioner, going by the

definition, it is clear that a building which is principally used for residential purposes other than hotels, lodges and boarding places are residential buildings.

10. The further case of the petitioner is that in the case on hand, 'building' is used for residential purpose alone and merely because a residential building was let out for a residential purpose, that cannot be treated as a building not for residential purposes, since the activity in the building is only a residential activity. It is also submitted that the plinth area of the building is to be calculated as per the proviso to Section 5(5) of Act, 1975, by excluding the garage.

11. The sum and substance of the contention advanced by the petitioner is that the garage of the building cannot be used for the purpose of calculating the plinth area of a residential building .

12. I have heard learned counsel for the petitioner Sri. Lal K. Joseph and the learned Government Pleader Smt. Resmitha R. Chandran, and perused the pleadings and materials on record.

13. The first question that emerges for consideration is whether a residential building given on rent for residential purpose can be

treated as a commercial building. Residential building is defined under Section 2(l) of the Act, 1975 to mean 'a building or any other structure or part thereof built exclusively for residential purpose including out- houses or garages appurtenant to the building for the more beneficial enjoyment of the main building. But what is excluded therefrom is hotels, boarding places, lodges and the like'. Suppose, a building is constructed as a residential building and the same is given on rent, that will not change the characteristics of the residential building as is provided under Section 2(l) of the Act, 1975.

14. Therefore, the re-assessment done by the Tahsildar levying an amount of Rs.18,000/- towards building tax on the basis that since the residential building is given on rent for residential purposes, the activity is to be treated as a commercial activity and the building tax is to be levied as if the building is a commercial building, is not a correct legal approach to the issue on hand.

15. Looking from that angle, re-assessment done by the Tahsildar cannot be sustained under law. Even though this aspect was raised before the appellate authority as well as the revisional

authority, both the authorities have concurred with the Tahsildar and held that the building is to be treated as a commercial building and the assessment done accordingly.

16. The said findings of the appellate authority as well as the revisional authority also cannot be sustained under law, since the findings are against the statutory provisions contained under the Act, 1975. That apart, the assessment was done including the garage of the residential building and the total plinth area is calculated taking into account the garage also.

17. According to the petitioner, the garage has an area of 12.775 sq. meters, which cannot be included for the calculation of the plinth area, in view of the proviso contained under Section 5(5) of the Act, 1975. Section 5 deals with 'charge of building tax, which clearly specifies the manner in which assessment is to be made. However, sub-Section (5) thereto makes it clear that 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.

18. But , as per the Kerala Finance Act, 1993 (Act 13 of 1993), which has come into force on and with effect from 01.03.1993, a proviso is added to Section 5(5) of the Act, 1975, which states that “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.” This was presumably done on the basis of the judgments rendered by this Court in various writ petitions. This aspect can be further strengthened by making a reference to Section 6 of the Act, 1975 dealing with 'determination of plinth area' and the proviso added to the same on and with effect from 01.03.1993, and it reads thus:

“6. *Determination of plinth area.*— The plinth area of a building for the purposes of this Act, shall be the plinth area of the building as specified in the plan approved by the local authority or such other authorities as may be specified by Government in this behalf and verified by the assessing authority in such manner as may be prescribed.”.]

[Provided that the plinth area of a garage or any other erection or mstructure appurtenant to a residential building used for storage of firewood or for any non-residential purpose shall not be taken into account for determining the plinth area of that building.”



19. Therefore, considering the said aspect also, it can be seen that the Tahsildar was not entitled under law to make an assessment by including the plinth area of the garage.

20. Considering the above factual and legal circumstances, I am of the definite opinion that interference is required to the order of assessment made by the Tahsildar as per Exts. P1 and P3 and the orders in the appeal and revision passed by the Revenue Divisional Officer as well as the District Collector.

21. Accordingly, I quash Exts.P1 and P3 orders of assessment passed by the Tahsildar, Kodungallur Taluk dated 06.10.2006, and 19.04.2008; and consequently Ext. P6 order dated 19.09.2009 and Ext. P9 order dated 04.08.2016 passed by the Revenue Divisional Officer and the District Collector respectively are also quashed.

22. However, I direct the Tahsildar, Kodungallur Taluk, respondent No.3, to re-assess the building in question of the petitioner situated in survey No. 213/8 of Lokmalleswaram village in accordance with the findings and the observations made above, within one month from the date of receipt of a copy of this judgment, after providing an

opportunity participation to the petitioner.

23. It is informed by the learned counsel for the petitioner that 50% of the amount remitted as per the reassessment done was paid by the petitioner, in order to maintain a revision before the District Collector. Therefore, there will be a direction to the Tahsildar, Kodungallur Taluk, to return 50% of the amount already deposited by the petitioner, at the earliest and at any rate within one month from the date of receipt of a copy of this judgment; or if the assessment is made within the said period as directed above, necessary adjustments can be made towards building tax and the balance amount shall be returned to the petitioner immediately thereafter.

This writ petition is allowed as above.

sd/- **SHAJI P. CHALY, JUDGE.**

*Rv*

**APPENDIX OF WP(C) 30074/2016**

PETITIONER'S EXHIBITS:

- EXHIBIT P1 TRUE COPY OF THE ASSESSMENT ORDE DTD 6/10/2006.  
EXHIBIT P2 TRUE COPY OF THE APPEAL MEMORANDUM FILED  
BEFORE THE REVENUE DIVISIONAL OFFICER, THRISSUR  
DTD 30/10/2006.  
EXHIBIT P3 A TRUE COPY OF THE ORDER NO C5-6351 DTD  
19/4/2008.  
EXHIBIT P4 A TRUE COPY OF THE APPEAL MEMORANDUM DTD  
14/5/2008.  
EXHIBIT P5 A TRUE COPY OF THE ORDER GRANTING STAY OF  
FURTHER PROCEEDINGS PURSUANT TO EXT P3 ORDER  
OF ASSESSMENT DTD 19/1/2009.  
EXHIBIT P6 A TRUE COPY OF THE ORDER DISMISSING THE APPEAL  
NO C1-8360/08/KDS DTD 19/9/2009.  
EXHIBIT P7 A TRUE COPYOF THE REVISION PETITION DTD  
23/11/2009.  
EXHIBIT P8 A TRUE COPY OF THE RECEIPT OF TAX REMITTANCE DTD  
26/11/2015.  
EXHIBIT P9 A TRUE COPY OF THE ORDER NO G8/56250/15 DTD  
4/8/2016 OF THE DISTRICT COLLECTOR, DISMISSING  
THE APPEAL.

RESPONDENTS' EXHIBITS: NIL

/True Copy/

PS to Judge.