



2023:KER:30732

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 31ST DAY OF MAY 2023 / 10TH JYAISHTA, 1945

WP(C) NO. 41464 OF 2016

PETITIONER:

MOHAMMED KABEER
AGED 55, S/O. MOHAMMED KHAN,
KABEER MANZIL, MANCHOLLAR, PATHANAPURAM,
KOLLAM 689 695, REPRESENTED BY POWER OF ATTORNEY,
SAJITHA MOHAMMED KABEER, AGED 51, W/O. MOHAMMED KABEER.
BY ADVS.
SRI.PRAVEEN K. JOY
SRI.NIXON PAUL

RESPONDENTS:

- 1 THE SECRETARY,
PATHANAPURAM GRAMA PANCHAYAT, KOLLAM.
- 2 PATHANAPURAM GRAMA PANCHAYAT
PATHANAPURAM, KOLLAM, REPRESENTED BY ITS SECRETARY.
BY ADVS.
SRI.BIJU K. MATHEW
SRI.V.PHILIP MATHEW

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
31.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dated this the 31st day of May, 2023

This writ petition is filed challenging Ext.P5 demand raised against the petitioner for property tax. It is submitted by the learned counsel for the petitioner that the petitioner had constructed a building which was assessed to property tax in the year 2000 and the petitioner was paying the property tax as demanded. However, it is submitted that, without any prior notice or intimation, Ext.P5 notice was issued to the petitioner dated 23.12.2016 requiring the petitioner to remit an amount of Rs.1,36,731/- being the property tax required to be paid by the petitioner from 2013-2014 onwards. It is submitted by the learned counsel for the petitioner that the petitioner had not been given any notice or opportunity with regard to the revision of the tax already assessed. It is contended by the learned counsel for the petitioner that the building of the petitioner was more than 15 years old even at the time of issuance of Ext.P5 and that no enhancement is required in terms of the Rules.



2. A counter affidavit has been placed on record by the respondents stating that Ext.P5 demand had been raised on the basis of a general revision of property tax as authorized by the Government by Ext.R1(a) notification dated 14.01.2011. It is submitted that the building of the petitioner was constructed in the year 2000-2001 and was assessed to property tax on the basis of the annual rental value of the building. It is submitted that the property tax was assessed as Rs.8359/- plus Library Cess and this was not varied till issuance of the Government Order in 2011. It is submitted that the same property tax was being paid by the petitioner till the issuance of Ext.P5. It is stated that since the basic rate for auditoriums under Ext.R1(a) was revised at the minimum of Rs.20/- and the maximum of Rs.40/- per square meter of plinth area. The building of the petitioner which has a plinth area of 840 sq.m. is assessed to tax at Rs.35,280/- and the demand is raised. It is further submitted that there is no illegality in Ext.P5 demand notice since notice and news in respect of enhancement/increase in property tax was published in newspapers informing the public with regard to enhancement/increase in property tax. It is stated that the petitioner did



not file any objections to the notices and Ext.P5 was therefore completely in order.

3. Having considered the contentions advanced, I notice that Ext.R1(a) is a notification issued under sub sections (2) and (5) of Section 203 of the Kerala Panchayat Raj Act, 1994 which enables the Government to fix, by notification, the minimum and maximum rates for property tax applicable to plinth area of categories of buildings and the date on which they shall come into force. Sub section (4), which was introduced on 26.04.2013, provides that the limits of rates of basic property tax fixed by the Government under sub section (2) and the rates of basic property tax once determined by the Village Panchayat subject thereto under sub section (3) shall be in force for five years from the date on which they come into force and thereafter, on completion of every five years, the Government and the Village Panchayat respectively shall revise the rates of basic property tax by making an enhancement at the rate of 5% on the existing limits and rates in each year in such manner as to have an enhancement of 25% by the completion of the period of every 5 years so as to be in force



for the next five years. While assessing the tax in accordance with the revised rates of tax as stated above, in the case of buildings which are new, reconstructed and altered in usage, the Secretary shall fix the tax as prescribed and take further action. Clause (b) provides that in case of buildings which does not belong to the category stated in Clause (a) and the annual property tax of which is fixed once based on the plinth area for the purpose of revising the annual property tax for the subsiding five year period, the Village Panchayat shall revise the tax by making an enhancement of 25% along with the existing annual property tax and accordingly, the Secretary shall give deemed notice for the next five years to the owner of the building provided that while revising such annual property tax, no deduction or addition under sub rule (7) shall be applicable. The provisions of the 2011 Rules are also relied on by both counsel. The learned counsel for the petitioner submits that in case of buildings which are older than 10 years, no enhancement is contemplated under the Rules.

4. I notice that Ext.R1(a) notification dated 14.01.2011 is only the notification issued by the Government under sub section (2) of Section



203 of the Panchayat Raj Act enabling the Government to fix the minimum and the maximum of property tax in respect of specified classes of buildings. In the instant case, it is the specific case of the Panchayat that the building of the petitioner was constructed in 2000-2001 and had been assessed to property tax on the basis of the annual rental value of the building. Even in case Ext.R1(a) notification is issued by the Government, there cannot be an automatic demand for tax without fixing the tax payable in accordance with the procedure provided in the Act and the Rules in terms of the total plinth area of the building. Though it is contended in the counter affidavit that notices were published in newspapers regarding enhancement of tax, nothing is produced to show that any order fixing the rate of tax of auditoriums as Rs.40/- per square meter had been issued or published.

5. In the above view of the matter, I am of the opinion that Ext.P5 demand raised without any assessment having been made is incompetent. The contention raised by the petitioner that the tax has been demanded at the maximum rate possible as notified in Ext.R1(a) without considering any relevant aspect including the age of the



building appears to be well founded. In the result, there will be a direction that in case the petitioner submits his objections to the assessment of property tax, the same shall be taken note of by the Secretary and a proper order of assessment shall be passed with notice to the petitioner. The demands, if any, on the basis of such assessment can be raised by the Secretary in accordance with the provisions of the Panchayat Raj Act and the Rules made thereunder. To enable a proper consideration of the objections, Ext.P5 shall stand set aside. Necessary action shall be taken by the Panchayat to put the petitioner on notice within a period of one month from the date of receipt of a copy of this judgment. Further action in accordance with law will be taken, after considering the objections raised by the petitioner also, within a period of two months thereafter.

This writ petition is ordered accordingly.

Sd/-

ANU SIVARAMAN
JUDGE

NP



APPENDIX OF WP(C) 41464/2016

PETITIONER'S EXHIBITS

EXHIBIT P1	COPY OF THE TAX RECEIPT DATED 25.1.12 OF THE IST RESPONDENT.
EXHIBIT P2	COPY OF THE RECEIPT DATED 16.3.06 OF THE IST RESPONDENT.
EXHIBIT P3	COPY OF THE RECEIPT DATED 29.5.00 OF HE IST RESPONDENT.
EXHIBIT P4	COPY OF THE NOTICE DATED 23.12.16 OF THE IST RESPONDENT.
EXHIBIT P5	COPY OF THE NOTICE DATED 23.12.16 OF THE IST RESPONDENT.

RESPONDENTS' EXHIBITS:

EXHIBIT R1(a)	COPY OF G.O NO.19/2011/LSGD DATED 14.01.2011.
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