

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE EASWARAN S.

THURSDAY, THE 9TH DAY OF JANUARY 2025 / 19TH POUSHA, 1946

WA NO. 2068 OF 2024

AGAINST THE JUDGMENT DATED 19.11.2024 IN WP(C) NO.40431 OF
2024 OF HIGH COURT OF KERALA

APPELLANT(S)/WRIT PETITIONER :

FEDERAL HOUSE CONSTRUCTION CO-OPERATIVE SOCIETY LTD.,
REPRESENTED BY ITS SECRETARY, REGN. NO.E -962,
FEDERAL GARDENS, PULINCHODU, ALUVA, PIN - 683573

BY ADVS.
JOHN NELLIMALA SARAI
ISAC T.PAUL

RESPONDENT(S)/RESPONDENT 1:

- 1 THE TAHSILDAR,
KARUMALLOOR VILLAGE, PARAVUR TALUK,
ERNAKULAM DISTRICT, PIN - 683513
- 2 THE REVENUE DIVISIONAL OFFICER,
KB JACOB ROAD, FORT KOCHI, KOCHI,
KERALA, PIN - 682001
- 3 THE DISTRICT COLLECTOR,
ERNAKULAM DISTRICT, COLLECTORATE/CIVIL STATION,
KAKKANAD P.O., ERNAKULAM, PIN - 682020

ADV. SMT. RESMITHA RAMACHANDRAN, GP

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 19.12.2024,
THE COURT ON 09.01.2025 DELIVERED THE FOLLOWING:

**“C.R”****JUDGMENT****Easwaran S., J**

This intra court appeal is preferred by the petitioner aggrieved by the dismissal of the Writ Petition No.40431 of 2024. We are called upon to decide whether a multi storied residential complex constructed out of the funds of a group of persons is liable to be taxed against the owner/person who constructed it or is against the individual members for whose benefit the said flat is constructed.

2. Succinctly, the brief facts for disposal of the appeal are as follows:

2.1 The appellant is a house construction society registered under the provisions of Section 7 of the Kerala Co-operative Societies Act, 1969. The appellant society purchased the land on behalf of its members for construction of a multi-storied apartment complex in Survey No.92/8-3, 8-5, 8-1 and 8-2 located within the Karumalloor Village, Paravur Taluk. On 11.1.2020, the Occupancy Certificate was issued by the Karumalloor Panchayath. The appellant states that the society had constructed the said building for its members and it ought



to have been assessed with the tax under the applicable law and not as a single unit. Although the ownership still vests with the society, the 120 individual apartments of the building are in possession of its individual members and hence the members individually are liable to pay the one time tax under the Kerala Building Tax Act, 1975.

2.2. On 25.1.2021, the Tahsildar assessed the building as a whole and an amount Rs.39,82,800/- was demanded from the petitioner as tax. At the time of levy, the society could not execute individual sale deeds in favour of 120 members since there was some dispute regarding the quantum of stamp duty to be paid in respect of sale deeds. The appellant contends that the flats are allotted as per 120 allotment letters and, for which, 120 separate sale agreements have been executed and that separate electricity connections for 120 flats are taken.

2.3. Aggrieved by the order of assessment, an appeal dated 22.03.2021 was preferred by the appellant which came to be dismissed on 25.7.2023. It is contended that, while dismissing the appeal, the Revenue Divisional Officer (R.D.O.) had apparently relied on a report of the Tahsildar dated 4.5.2022. Aggrieved by the dismissal of the appeal by the R.D.O., the society preferred a Revision



Petition under Section 13 of the Kerala Building Tax Act, 1975 which came to be dismissed by Ext.P7 order. Challenging Ext.P7 order, the petitioner approached the writ court for a declaration that the petitioner is not liable to be assessed under the provisions of the Kerala Building Tax Act and it is the individual owners who are liable to be taxed. The learned Single Judge dismissed the writ petition in limine without even calling upon the State to answer the various contentions raised in the writ petition. Thus, the appellant is in appeal before us.

3. Heard Smt. John Nellimala Sarai, the learned counsel appearing for the appellant and Smt. Resmitha Ramachandran, the learned Government Pleader appearing on behalf of the State.

4. The learned counsel appearing for the appellant submitted that in the light of the Explanation 2 to Section 2(e) of the Kerala Building Tax Act, 1975, 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 apartments or flat shall be treated as a separate unit. While issuing the order of assessment, the assessing authority has not taken into consideration the Explanation 2 to Section 2(e) of the Act and



therefore the assessment becomes bad. The learned counsel further pointed out that, going by the definition of owner under Section 2(i), the “owner” includes a person who for the time being is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of himself and others. The appellant, which is a society formed for the purpose of the benefit of the retired officers of the Federal Bank, cannot, for the purpose of assessment under the provisions of the Kerala Building Tax Act, be termed as an owner because, the entire cost of construction has been borne out by the 120 individual members in whose favour, the letter of allotment has been issued and therefore cannot be assessed as a single unit. The learned counsel thus submitted that the findings rendered by the learned Single Judge is unsustainable and that the judgment has been rendered without referring to the settled position of law.

5. On the other hand, the learned Government Pleader supported the order of assessment and contended that in so far as the ownership of the building has not been transferred, the appellant continues to be the owner of the building which entitles the 1st respondent to assess the building as a single unit.

6. We have considered the rival submissions raised across the



Bar.

7. When we examine the scheme of the taxing statute namely, Kerala Building Tax Act, we find that the definition of an owner is an inclusive definition. Section 2(i) of the Kerala Building Tax Act is extracted hereunder :

(i) “**owner**” includes a person who for the time being is receiving, or is entitled to receive, the rent of any building, whether on his own account or on account of himself and others or as an agent, trustee, guardian or receiver for any other person or who should so received the rent or be entitled to receive it if the building or part thereof were let to a tenant.

8. Therefore, in order to find out the real definition of the owner, we have to necessarily fall back on the general law. Since the definition of owner under the Kerala Building Tax Act, 1975 is an inclusive definition, the same will not come to the aid of the appellant. Admittedly, the appellant still continues to be the owner of the property. It is immaterial as to whether the flats were constructed by pooling resources from 120 members in whose name 120 allotment letters have been issued by the appellant society. The fact remains that the title of the land vests with the appellant and the undivided share together with the respective flats is yet to be assigned in the name of 120 individuals. The mere fact that the flats were constructed



by the appellant which is preceded by an agreement of sale and agreement of construction, that by itself will not confer title on the 120 allottees in whose favour the respective flats were allotted.

9. As stated earlier, since the Kerala Building Tax Act, 1975, does not define the word transfer, we therefore have necessarily to fall back on the definition of 'Transfer' under Section 5 of the Transfer of Property Act which reads as under:

"Transfer of property" defined. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons; and "to transfer property" is to perform such act. In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

10. A reading of Section 5 of the Transfer of Property Act, 1882 shows that the transfer of property must take place by an act in present or in future to one or more living persons. Section 17 of the Registration Act, 1908 mandates that any transfer of interest exceeding a value of Rs.100/- must be done by a registered document.

11. Section 54 of the Transfer of Property Act, 1882 defines the



sale. Section 54 reads as under:

“ 54. “Sale” defined.- “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.- Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale. - A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.”

12. Read cumulatively with Section 54 of the Transfer of Property Act, 1882 and Section 17 of the Registration Act, 1908, the irresistible conclusion is that the transfer cannot take place unless a registered document is executed. When the statute itself provides that a contract of sale by itself will not create any interest over the property, we fail to understand as to how the appellant could contend



that by mere issuance of allotment letters to 120 individual members, the appellant is divested of the title over the property and individual flats.

13. It may be true as the appellant contends that the liability to pay tax on assessment of a single unit may be less compared to the assessment of the whole building as a unit. However, we cannot remain oblivious of the fact that so long as the appellant continues to be the owner of the property and the taxable event being the completion of the building and also in the absence of any registered document evidencing conveyance of the undivided share along with the individual flats in favour of 120 allottees before the occurrence of the taxable event, the appellant cannot escape from the liability to pay tax.

14. We also noticed that a similar issue had come up for consideration before a learned Single Bench of this Court in **Hi Lite Realtors (India) LLP. v. Revenue Divisional Officer** [2018 (3) KLT 237]. It was concluded by the learned Single Judge that the mere agreement of sale will not confer any title on the allottees and that the taxable event being the completion of the building, the owner at the time of the taxable event has to necessarily bear the liability to pay



tax under the provisions of the Kerala Building Tax Act, 1975. On a close scrutiny of various statutory provisions and the reasoning given by the learned Single Judge, we are of the view that the learned Single Judge, in the decision above, has rightly deciphered the point of law and decided the case correctly.

15. In **Sanjay Sharma Vs Kotak Mahindra Bank Ltd and Ors** {Civil Appeal 14284/2024 [SLP No 330/2017]} decided on 10-12-2024, the Supreme Court reiterated the scope of Section 54 of the Transfer of Property Act, 1882 and held that registration of the sale deed is essential to complete and validate the transfer and until the registration is effected, the ownership is not transferred.

16. Coming back to the facts of this case, the learned Single Judge, while rendering the impugned judgment, has specifically taken note of the fact that, on the date of completion of the building and the date on which the occupancy certificate was issued for the building, the appellant remained to be the owner of the land and building. The learned Single Judge also found that the Explanation 2 to Section 2(e) of the Act cannot be interpreted exclusively with reference to the definition of owner under Section 2(i) of the Act.

17. We find that even today, the appellant remains as the owner



of the property as well as the 120 flats which were constructed by them. We are not impressed with the argument of the learned counsel for the appellant and find that merely because 120 allotment letters were issued to the individual allottees, the appellant will not be divested of the title over the property unless and until registered conveyance is executed. Therefore, we are of the considered view that the decision of the learned Single Judge does not call for any interference. Consequently, we find that the appeal lacks merit and hence the same is dismissed. No order as to costs.

Sd/-

Dr. A.K. Jayasankaran Nambiar
Judge

Sd/-

Easwaran S.
Judge

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