Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1640 of 2015
(@ SLP(C) NO. 12269 OF 2014)

State of Kerala & Ors. ... Appellants

Versus

A.P. Mammikutty ... Respondent

J U D G M E N T

Dipak Misra, J.

The respondent invoked the jurisdiction of the High Court of Kerala at Ernakulam under Article 226 of the Constitution assailing the demand of luxury tax imposed on a building that consists of 13 residential apartments. The Tahasildar who is the competent statutory authority under the Kerala Building Tax Act, 1975 (for brevity "the Act") imposed luxury tax on the building on the base of Section 5A of the Act vide order dated 1.10.2003 in Ref

B4-6435/03 whereby he had measured the plinth area of all the residential apartments and computed the tax treating the same as a singular building.

2. The learned Single Judge opined that the levy of luxury tax of the entire building on the owner was not permissible under the Act, for the scheme is to levy luxury tax for each residential apartment, plinth area of which is in excess of the limit provided under Section 5A of the Act. It has been further ruled by the learned Single Judge that if the plinth area of each residential apartment was below 278.7 sq. mts., there was no scope of levying luxury tax. And if the concerned Tahsildar had found that the plinth area of the residential apartments in toto was above 278.7 sq. metres, the luxury tax for such apartments could be demanded, the writ petition was disposed of with the direction that Tahsildar would verify the plinth area of each residential apartment and levy luxury tax only for such of the residential apartment plinth area of which was in excess of the limit provided under Section 5A of the Act. The relevant part of the opinion expressed by the learned Single Judge is reproduced below:-

> "Even though petitioner is the owner of the entire building, luxury tax is leviable only if the plinth area of each residential apartment is in excess of the limit provided under Section 5A of the Kerala Building Tax Act. Tahsildar has demanded luxury tax by clubbing the plinth area of various residential apartments. This is not permissible under the Act and the scheme is to levy luxury tax for each residential apartment, plinth area of which is in excess of the limit provided under Section 5A of the Act. If plinth area of each residential apartment is below 278.7 sq. meters then there is no scope for levying luxury tax. However, if Tahsildar on inspection finds that the plinth area of any residential apartment is above 278.7 sq. metres, then he can demand luxury tax for such of the apartment or apartments."

3. Being aggrieved by the aforesaid judgment and order passed by the learned Single Judge dated 12.06.2008 the State of Kerala and its functionaries preferred writ appeal No. 2150 of 2008. The Division Bench referred to Section 5A of the Act, dictionary clause contained in Section 2, especially, Section 2 (k) and the Explanation II to Clause (e) of Section 2 and came to hold that if there is one building having more than one floor and they are inter-connected with each other and if one floor is of no use without the existence of another floor, then it has to be considered as one building. The Division Bench further proceeded to state that as there were 13 independent flats or apartments and

each of the building could be used on its own without reference to the other apartment, the question of taking the measurement of another building to calculate the plinth area would not arise. The conclusion recorded by the Division Bench reads as follows:-

> "For the purpose of calculating the plinth area, if the intention of the legislature was to adopt the entire Explanation (2) to clause (e) even with reference to proviso to 2(k) there was no need to mention the aggregate area where a building has more than one floor. The very reference to more than one floor of a building would explicitly mean, if read along with the proviso that whether the building is a single unit so far as functional use is concerned, or separate units, so far as functional utility of the building. If there is one building having more than one floor and they are interconnected with each other, in other words, if one floor is of no use without the existence of another floor, then it has to be considered as one building. Therefore, if there are 13 independent flats or apartments and if each of the building could be used on its own without reference to the other apartment, the question of taking the measurement of another building to calculate the plinth area would not arise."

4. The singular question that emanates for consideration is whether under the provisions of the Act, the revenue authorities are entitled to levy the demand of luxury tax from the respondent by clubbing the plinth area of the apartments which are 13 in number or the plinth area of

the individual apartment should be taken into consideration for levy of the said impost.

5. Relying on Section 2(e) of the Act, it is contended by the learned counsel for the State that on a plain reading of Explanation II, it is vivid that a building consisting of different apartments or flats can be deemed to be a separate building, if two conditions, namely, that the apartments or flats are owned by different persons; and the cost of construction of the building has been met by all such owners jointly, are satisfied. The submission of the learned counsel for the appellants is that the ownership of all the 13 apartments rests with the respondent himself and the cost of construction having been singularly borne by him, the twin conditions enshrined under the Explanation II are not satisfied, and, therefore, it is impermissible to treat the individual apartments of the building as different buildings. Learned counsel would emphasise that the situation envisaged under Explanation II to Section 2(e) would arise in a situation where the apartments are pre-booked by the buyers and whole consideration is paid in advance to the builder thereby satisfying the condition of separate

ownership and joint meeting of costs. Reliance has been placed on Section 5A of the Act and other definitions under Section 2 and on that basis, it is urged that the plinth area as prescribed is far excess of the same inasmuch as the residential portion of the building is 590.4 sq.mts.

6. The submission of the learned counsel for the respondent is that the Explanation II to Section 2(e) has no application for the levy of luxury tax, for it is only applicable for the purpose of levy of building tax. It is argued by him that levy of luxury tax is only for a residential building and the reference to building in Explanation II in Section 2(e) does not apply to a residential building. Learned counsel has drawn distinction between "residential building" and a "building" by drawing our attention to Section 2(l) of the Act. It is propounded by him that none of the 13 apartments individually have the plinth area of more than 278.7 sq. mts. and hence, the proviso to Section 5A of the Act is not applicable to the present case. It is contended that demand has to be made for the residential apartments and not for the owner who is holding the whole unit. Elaborating the said stand, it is submitted that there cannot be clubbing of

the residential apartments together for the purpose of imposition of luxury tax.

7. To appreciate the rival submissions, it is necessary to extract the relevant part of Section 2(e), which defines "building". It is as under:-

> " "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, thatch or a latrine which is not attached to the main structure.
>
> [...]
>
> Explanation II: 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 apartment or flat shall be deemed to be a separate building." [Emphasis supplied]

8. Section 2(k) of the Act, which defines the "plinth area", reads as follows:-

> "plinth area" means the area included in the floor of a building and where a building has more than one floor the aggregate area included in all the floors together: [Emphasis supplied]
>
> Provided that in case of a building referred to in the Explanation (2) to clause (e), the plinth area shall be calculated separately."

9. Section 2(l) of the Act that defines "residential

building", is as follows:-

> "'residential building' means 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 does not include hotels, boarding places, lodges and the like."

10. Section 5A stipulates charge of luxury tax. The said provision, being of significance, to deal with the controversy in hand, is reproduced below:-

> "5A. Charge of luxury tax.- (1) Notwithstanding anything contained in this Act, there shall be charged a luxury tax of two thousand rupees annually on all residential buildings having a plinth area of 278.7 square metres or more and completed on or after the 1st day of April, 1999.

11. As is evident, the aforesaid provision commences with a non-obstante clause, and, therefore, has to be given primacy over the other provisions of the Act. It clearly provides that luxury tax of Rs.2,000/- is payable by the owners of all residential buildings constructed on or after 1.4.1999 having plinth area of 278.7 sq.mts. or more. In the instant case, there is no cavil over the fact that the building in question consists of three storeys and has 13 apartments/ flats. There is no dispute over the fact that the

aggregate area is more than 278.7 sq.mts. The controversy that has emerged is what is meant by the term "residential building" and whether each of the 13 apartments constitute a separate building or is a singular building for the purpose of levy of luxury tax. There is no quarrel over the fact and it is also manifest that each of the residential apartments has the plinth area of less than 278.7 sq.mts., but when the entire plinth area of 13 apartments is taken by applying the method of clubbing or when the plinth area is aggregated, it exceeds 278.7 sq.mts. It is the admitted position that the building has been constructed after 1.4.1999, that is, the date provided in Section 5A of the Act.

12. Section 2(k) of the Act defines the term "plinth area" and Section 2(l) of the Act defines the term "residential building". We have already quoted the aforesaid provisions. As we notice, the term "plinth area" means the area included in the floor of a building and where a building consists of more than one floor, aggregate area of all the floors and hence, the plinth area can include the entire construction, that is, the floor area of a multi-storied building. The question would still arise whether different

apartments owned by separate persons can be clubbed and aggregated in a multi-storied building. The proviso thereto states that the plinth area of an entire building can be separated. It is postulated therein that in case of a building when Explanation II to Section 2(e) is attracted, the plinth area should be calculated separately. The issue which requires examination and apposite answer is whether the Explanation II to Section 2 (e) as an ameliorative and beneficial provision, restricts and debars calculation and computations of plinth area of each independent apartment by different owners in a multi-storied building.

13. Having dealt with the concept of plinth area and its applicability in the backdrop of the provision, we are required to scan the definition of "building". As noted earlier, "building" has been defined in Section 2(e) of the Act to mean a house, out-house, garage or any other structure, or part thereof. The construction can be masonry, bricks, wood, metal or other material. It does not include portable shelter or sheds including a latrine which is not attached to the main structure. Explanation II is the fulcrum that would determine the question that has emanated for

consideration in this case. The said Explanation lays the stipulation that when a building consists of different apartments or flats owned by different persons and cost of the building has to be met by all such persons, each apartment or flat is deemed to be a separate building. On a dissection of the said provision, it appears that said Explanation would apply when there is a building; that the building must consist of different flats or apartments; that each apartment or flat must be owned by different persons and cost of construction of the building must have been met jointly, and in such cases plinth area cannot be clubbed. Learned counsel for the appellant-State has submitted that as there has been no contribution of funds at the time of construction. The Explanation II to Section 2(e) would not be applicable and the respondent has to be treated as the sole owner. As we perceive, Explanation II to Section 2(e) takes care of a situation where the building is constructed and there are different owners who have paid the purchase price for their respective apartments. The Explanation should not be read as a negative provision, detrimental and fatal to cases where there are separate owners of the

apartments, for that is not the basic object and purpose behind the Explanation II to Section 2(e) of the Act. It is a benevolent and beneficial provision which has not been enacted to curtail and nullify what is logical and apparent to reason.

14. In this context, it is imperative to analyse what is meant by "residential building". The definition in clause 2(l), means a building or any other structure or part thereof used for residential purpose and house or out-house or garage appurtenant to a building for more beneficial enjoyment. It excludes hotels, boarding places, lodges and the like. Thus, the expression "residential building" cannot be interpreted without reference to the term "building" and Explanation II to Section 2(e) of the Act. Therefore, each residential building owned by single owner would be subjected to luxury tax, if it has the plinth area which exceeds 278.7 sq.mts. It makes no difference whether the residential building consists of one floor or it is two-storied or three-storied or consists of multiple flats or apartments. The entire plinth area in the residential building owned by a singular owner is required to be aggregated. It is noticeable

that Section 5A does not refer to aggregate plinth area of all the floors. The intention of the legislature is apparent that if a person is the owner of the plinth area of 278.7 sq.mts or more in one building, even if it consists of separate or distinct apartments, he would be liable to pay the luxury tax under Section 5A of the Act. It also becomes further clear when the definition of "plinth area" in Section 2 (k) is properly appreciated. It clearly postulates that "plinth area" means the area included in the floor of the building and where building has more than one floor aggregate area included in all the floors are taken together. The proviso to the said definition lays down that in case of a building referred to in the Explanation II to clause (e), the "plinth area" shall be calculated separately. Thus, Section 2(k) has an insegragable nexus with the definition of "building". Explanation II to Section 2(e) which defines "residential building" only conveys about the building meant for residential purpose and what it includes. Section 5A is the charging Section and as has been stated earlier, it commences with a non-obstante clause. It determines the annual luxury tax on all residential buildings having a

plinth area of 278.7 sq. mts. or more. It provides a date for completion that is 1st April 1999. Though, it does not provide for aggregate it refers to residential building definition of which refers to a building. Section 2(k) defines "plinth area" of the building. Section 5A also includes "plinth area". Though the term "aggregate" is not mentioned but the words therein are buildings having plinth area and in that context one is required to scan and analyse the meaning of the term "building" and the "plinth area" as defined under Section 2(e) and 2(k) respectively. "Plinth area" as defined clearly provides that when one building has more than one floor, the aggregate area includes all the floors. To give an example, a building consisting of four storeys belongs to a single owner, the aggregate of all the floors are to be included for calculation of the plinth area and thereby the computation of the luxury tax has to be determined as provided under Section 5A. Be it noted, the proviso to Section 2(k) clearly stipulates that if a building as referred falls under Explanation II to Section 2(e), the plinth area shall be calculated separately. The Explanation II refers to different apartments or flats owned by different

persons. It also states that the cost of the construction of the building is to be met by all such persons jointly. This Explanation, as noted before, is required to be appositely understood. The learned counsel for the state would submit that if there is initial booking and the persons have contributed for the construction definitely there shall be separate computation. The Explanation II has to be read with Section 5A which starts with a non-obstante clause. Section 5A as has been mentioned before refers to "residential building" having plinth area 278.7 sq. mts. or more and, therefore, the said provision also takes note of this definition. In view of the above, the contention advanced by the learned counsel for the State is difficult to accept. The definitions have to be given a proper construction. There can be a case where the owner erects a multi-storied building consisting 10 floors. He builds it at his own cost and thereafter he sells the apartments or flats to 10 persons and in that event he ceases to be the owner of the building. The 10 purchasers become the owners of flats and in such a situation it will lead to an absurdity because one single person who once owned the entire building or

several apartments, though has ceased to be the owner in law yet is asked to pay the luxury tax solely on the ground that at the time of construction there was no contribution by the purchasers or to put it differently there had been no prior booking. This is not the intention. The Explanation II to Section 2(e) has to be read harmoniously with proviso to Section 2(k) and Section 5A of the Act. The intention of the legislature as gatherable is that ownership of different flats and the cost of construction of building are met by all such persons. The meeting of the cost jointly is not to be narrowly construed to mean that there has to be an investment before the commencement of the construction of the building. The persons who purchase afterwards they really share the value of the construction cost apart from the profit margin due to the builder or the seller. Unless such an interpretation is placed, the original owner of flats when he ceases to be the owner of the building or the purchaser of a small apartment less then 278.7 square meters would still be liable to pay luxury tax. Such an interpretation would lead to absurdity.

15. In our considered opinion, the principle of purposive

interpretation of the provision has to be adopted and when such a construction is placed, it serves the legislative intent. To elaborate, a person may have a three-storied building and he owns it, then there has to be different computation as per the main part of Section 2(k) and for that it has to be calculated as is done by the revenue authority. Once he ceases to be the owner, he will not be liable to pay the luxury tax. But as long as he continues to be the owner, as per Section 5A, he will be liable to pay the luxury tax for all floors/apartments subject to the cap provided under Section 5A of the Act. In this context we may refer to the decision in ***State of T.N. v. Kodaikanal Motor Union (P) Ltd.***[1] wherein this Court, after referring to ***K.P. Varghese b. ITO***[2] and ***Luke v. IRC***[3]**,** observed thus:-

> "The courts must always seek to find out the intention of the legislature. Though the courts must find out the intention of the statute from the language used, but language more often than not is an imperfect instrument of expression of human thought. As Lord Denning said it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. As Judge Learned Hand said, we must not make

[1] (1989) 3 SCC 91
[2] (1981) 4 SCC 172 : 1981 SCC (Tax) 293
[3] (1964) 54 ITR 692 : 1963 AC 557 (HL)

> a fortress out of dictionary but remember that statutes must have some purpose or object, whose imaginative discovery is judicial craftsmanship. We need not always cling to literalness and should seek to endeavour to avoid an unjust or absurd result. We should not make a mockery of legislation. To make sense out of an unhappily worded provision, where the purpose is apparent to the judicial eye 'some' violence to language is permissible."

16. In ***Keshavji Ravji and Co. v. CIT***[4] it has been held by this court that when in a taxation statute where literal interpretation leads to a result that does not sub-serve the object of the legislation another construction in consonance with the object can be adopted.

17. In the case at hand, as is noticeable, the learned Single Judge had remanded the matter to the revenue authority and the Division Bench has declined to interfere. The Division Bench has applied the functional unit test. We do not accept the same. The learned Single Judge, as we have reproduced a paragraph hereinbefore, has opined that when the plinth area of any residential apartment is above 278.7 sq. mts., then the authority can demand luxury tax for such apartment or flat. Be it noted, the learned Single Judge has

[4] (1990) 2 SCC 231

held that even if the person is the owner of the entire building the computation would be apartment-wise. The said analysis is also incorrect. We have given purposive interpretation to Explanation II as it has to be read with Section 5A of the Act. When the owner parts with the building each apartment will be segregable for the purpose of luxury tax. If he remains the owner for the whole or part then he will be liable to pay for the plinth area in respect of the flats or apartments that is retained by him subject to the cap as envisaged under Section 5A of the Act. If he sells away the entire building then it has to be flat/apartment-wise calculation/computation, for every apartment owner is different than the others. Thus, the plinth area would be different. To clarify further, if a singular person purchases three flats, he will be liable on the basis of aggregate plinth area subject to the cap envisaged under Section 5A of the Act.

18. In view of the aforesaid, we allow the appeal and set aside the order of the revenue authority and that of the High Court in writ petition and the writ appeal, and remand the matter to the revenue authority to compute the luxury tax

in the manner which we have clarified hereinabove. There shall be no order as to costs.

.....J.
[Dipak Misra]

....., J.
[Prafulla C. Pant]

New Delhi
July 1, 2015