



WA NO. 753 OF 2020

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2025:KER:41697

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE P.M.MANOJ

THURSDAY, THE 12TH DAY OF JUNE 2025 / 22ND JYAISHTA, 1947

WA NO. 753 OF 2020

AGAINST THE ORDER DATED 02.06.2020 IN WP(C) NO.3603 OF 2020
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER:

ISON GEORGE
AGED 48 YEARS
KADATHUKALAM (H) , CHEERAMCHIRA PO, CHANGANASHERRY.

BY ADV SRI.RAJU K.MATHEWS

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT (TAXES) ,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 DISTRICT COLLECTOR,
COLLECTORATE, KOTTAYAM-686 002.
- 3 THASILDAR,
TALUK OFFICE, CHANGANASSERY-686 101.
- 4 VILLAGE OFFICER,
VILLAGE OFFICE, CHETHIPUZHA, CHANGANASSERY-686 106.

BY GOVERNMENT PLEADER SRI.V K SHAMSUDHEEN, SR

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
12.06.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

Dr. A.K.Jayasankaran Nambiar, J.

The petitioner in WP(C) No.3603 of 2020 is the appellant before us aggrieved by the judgment dated 02.06.2020 of a learned Single Judge dismissing his Writ petition.

2. The brief facts necessary for the disposal of this Writ Appeal are as follows:

The appellant is the owner of a residential building having a plinth area of 289.22 sq.m. comprised in Sy.No.82/8-1 in Chethipuzha Village in Chenganasherry Taluk. In the Writ Petition, he was aggrieved by Ext.P2 demand notice that sought to recover luxury tax as per the provisions of Section 5A of the Kerala Building Tax Act, 1975 for the assessment years from 2007-2008 to 2020-2021. The demand notice is dated 04.12.2019, and it was apparently the first demand notice served on the appellant demanding luxury tax. The challenge in the Writ Petition was essentially against the validity of Section 5A of the Kerala Building Tax Act, and the relief prayed for in the Writ Petition was for a declaration that Section 5A of the Kerala Building Tax Act was *ultra vires*, illegal unconstitutional and void.

3. The grounds in support of the reliefs prayed for in the Writ petition urged that since the 101st amendment to the Constitution had amended Entry 62 of List II of the 7th Schedule to the Constitution of India, by excluding the entry regarding taxes on luxuries, the State Legislature was



denuded of the power to levy luxury tax thereafter, and hence there could not have been a levy or collection of luxury tax in terms of Section 5A of the Kerala Building Tax Act from the appellant. The appellant also sought to quash Ext.P2 demand notice that was issued to him, and for a further direction to the 3rd respondent to refrain from recovering any amount by way of luxury tax under Section 5A of the Kerala Building Tax Act on the basis of Ext.P2 demand.

4. The learned Single Judge, who considered the matter found that merely because the 101st amendment to the Constitution had amended Entry 62 of List II of the 7th Schedule to the Constitution, it did not follow that the legislative competence to levy a tax of the nature envisaged under Section 5A of the Kerala Building Tax Act was taken away. He, therefore, proceeded to dismiss the Writ Petition as devoid of merit.

5. In the appeal before us, while Sri. Raju.K.Mathew the learned counsel for the appellant would reiterate the arguments made before the learned Single Judge, he would also point out, in the alternative, that the demand in Ext.P2 to the extent it pertains to the assessment years from 2007-2008 onwards is substantially hit by the provisions of limitation. Per contra, it is the submission of the learned Government Pleader that in the absence of any specific provision for limitation under the Kerala Building Tax Act, it was open to the State to recover all the past dues of luxury tax under Section 5A of the Kerala Building Tax Act from the appellant.

6. We have considered the rival submissions and find that the mere



fact that Entry 62 of List II in the 7th Schedule to the Constitution of India had been amended to take away the field of 'taxes on luxuries' from the ambit of legislative competence of the State Legislature, it did not necessarily follow that the levy of tax under Section 5A of the Kerala Building Tax Act was unconstitutional. As is trite, entries in the Lists under the 7th Schedule to the Constitution are only fields of legislation and if a particular legislative provision can trace its validity to any of the other fields of legislation mentioned in List II, then the statutory provision concerned would satisfy the test of legislative competence. In the instant case, we find that Section 5A of the Kerala Building Tax Act is in essence a tax on residential buildings which have a plinth area above 278.7 sq.ms. It is on account of its nature as a tax on buildings that the provision finds mention under the Kerala Building Tax Act, 1975, and not elsewhere. Entry 49 of List II of the 7th Schedule to the Constitution deals with 'taxes on lands and buildings' and so long as the charge under Section 5A of the Kerala Building Tax Act can be traced to the power of the State Legislature under Article 246 r/w Entry 49 of the List II of 7th Schedule to the Constitution, the argument against legislative competitiveness must necessarily fail.

7. As noticed by the Supreme Court in **Indian Aluminium Co. and Others v. State of Kerala and Others [(1996) 7 Supreme Court Cases 637]** the doctrine of pith and substance has been extended for consideration of the true character of the legislation even under the same legislative list. In all cases, therefore, the name given by the legislature in the impugned enactment is not conclusive of its competence to make it. It is the pith and substance of the legislation which decides the matter which, in



turn, needs to be decided with reference to provisions of the statute itself. We, therefore, see no reason to interfere with the findings of the learned Single Judge on this aspect in the impugned judgment.

8. That said, we note that Ext.P2 demand that was assailed in the Writ petition was dated 04.12.2019, and covered a period from 2007-2008 to 2020-2021. It is significant that under Section 5A of the Kerala Building Tax Act, the charge of luxury tax is on an annual basis at the rate specified under the provision. It would follow, therefore, that even in the absence of any express period of limitation prescribed for the recovery of unpaid taxes, a reasonable period of limitation has to be read in to check the actions of the taxing authorities. On the facts of the instant case, and taking note of the scheme of the levy of tax under the Act, we feel that a demand that extends to more than three years prior to the date of the demand notice cannot be legally sustained.

9. Accordingly, we partly allow this appeal by setting aside Ext.P2 demand notice to the extent it pertains to a demand for the assessment years from 2007-2008 to 2015-2016. By necessary implication, the demands from 2016-2017 onwards would stand validated. We make it clear that nothing in this judgment will prevent the appellant from adducing evidence before the Assessing Authority, in any of the future years, to the effect that the plinth area of the building in question is less than the threshold prescribed for attracting the levy of tax under Section 5A of the Kerala Building Tax Act.



The upshot of the above discussions, is that the appeal is partly allowed by upholding the impugned judgment of the learned Single Judge with regard to its finding on the validity of the charging Section, but allowing the appeal to the limited extent of setting aside Ext.P2 demand notice for the assessment years 2007-2008 to 2015-2016.

Sd/-

DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-

P.M.MANOJ
JUDGE

mns