2026 (6) KLR 182

High Court of Kerala
Ziyad Rahman A.A.; J.
W.P.(C) No. 38404 of 2025; 18 June 2026
Roy Joseph v. Thrickodithanam Grama Panchayat

Headnote

Kerala Panchayat Raj Act, 1994, Section 235AA — Levy of Property Tax for Unlawful Construction - Statutory Interpretation - Proportionality and Nexus.

Penal property tax (two times the tax amount plus normal tax) under Section 235AA can only be levied upon the portion of the building "so constructed unlawfully." It does not grant authority to the Panchayat to impose such penal rates on the entire building, including portions constructed with valid permits. Fiscal and penal statutes must be subjected to strict interpretation. Taxation cannot be imposed on the authorized portion of a building by inference, analogy, or equitable considerations. The authority to impose penal taxes must be explicitly conferred by law and cannot be expanded by the authorities. Punishment (penal tax) must be commensurate with the gravity of the wrong. There must be a rational nexus between the unauthorized act and the penalty imposed. Imposing penalties on legally constructed portions of a building lacks statutory support and is unsustainable.

Summary

The petitioner challenged demand notices and revenue recovery proceedings issued by the Thrickodithanam Grama Panchayat regarding a building that contained both authorized and unauthorized constructions. The Panchayat had levied property tax at three times the normal rate for the *entire* building, treating it as unauthorized. The High Court of Kerala, in setting aside the demand notices, held that Section 235AA of the Kerala Panchayat Raj Act, 1994, does not authorize the imposition of penal taxes on the entire building when only a portion is constructed unlawfully. The Court emphasized that penal provisions require strict interpretation; since the statute explicitly refers to the tax being levied on the building "so constructed unlawfully," the penalty must be confined to that specific area. The Court further observed that treating the entire building as unauthorized simply because an unauthorized addition exists is not supported by the Act. The respondents were directed to initiate fresh proceedings to reassess the tax, strictly confining the penal assessment to the unauthorized portion of the building after affording the petitioner an opportunity to be heard.

Referred Cases

1. *Commr. of Customs v. Dilip Kumar & Co.*, (2018) 9 SCC 1
2. *Vijay Singh v. State of U.P.*, (2012) 5 SCC 242
3. *State of W.B. v. Kesoram Industries Ltd.*, (2004) 10 SCC 201
4. *Hansraj and Sons v. State of Jammu & Kashmir and others*, AIR 2002 SC 2692
5. *Commissioner of Income-tax, Madras v. Kasturi and Sons Ltd.*, (1999) 3 SCC 346 / AIR 1999 SC 1275
6. *Commissioner of Wealth Tax, Gujarat III Ahmedabad v. Ellis Bridge Gymkhana*, (1998) 1 SCC 384
7. *Bhagat Ram v. State of H.P.*, (1983) 2 SCC 442
8. *The State of Bombay v. Automobile and Agricultural Industries Corporation, Bombay*, (1961) 12 STC 122

9. *A.V. Fernandez v. State of Kerala*, (1957) 1 SCC 560
10. *Gopeshewar Parsad v. State*, AIR 1951 Pat 570
11. *Standard Materials v. Massachusetts Fire & Marine Ins. Co.*, 94 N.E.2d 809 (1950)
12. *IRC v. Duke of Westminster*, 1936 AC 1
13. *Kephart v. Buddecke*, 80 P. 501, 20 Colo.App. 546 (1905)
14. *Dyke v. Gower*, (1892) 1 QB 220
15. *Blanton v. State*, 24 P. 439, 1 Wash. 265 (1890)
16. *G.W. Ry. v. Halesen Ry.*, 52 LJ QB 479 (1883)
17. *Clem v. State*, 33 Ind. 418 (1870)

Petitioner:By Advs. Sri.Liji.J.Vadakedom Shri.Athul V. Vadakkedom Smt.Rexy Elizabeth Thomas Smt.Ancy Daniel

Respondents:By Adv Sri.K.Mohanakannan Shri.Sayed Mansoor Bafakhy Thangal, Government Pleader

J U D G M E N T

The petitioner is the owner of a building with door Nos.19A, 19B, 19C, 19D, 19E, 19F, 19G, 19H, and 19I in Ward No.V. of the 1st respondent Panchayat. The challenge raised in this writ petition is against the demand of property tax, in respect of the said building, at three time of the normal rates for the entire construction, alleging that the petitioner had carried out certain additional construction on the said building, without obtaining necessary permits in this regard. According to the petitioner, imposing the tax liability at three times, which is penal in nature, could not have been made for the entire building, since the allegation of unauthorised construction is confined to a limited portion of the building.

2. The facts that led to the filing of this writ petition are as follows:

The said building was purchased by the petitioner along with the property, as per Ext.P1 sale deed dated 28.01.2014. After the purchase of said property, the petitioner had carried out certain additional constructions on the existing building. In respect of the said construction, the 2nd respondent-Secretary to the 1st respondent Panchayat, initiated proceedings under Section 235W of Kerala Panchayat Raj Act, by issuing a provisional order, alleging that, the petitioner had carried out constructions without obtaining any proper building permit and therefore, unauthorized. The petitioner submitted an application for regularization of the building under Kerala Panchayat Building (Regularisation of Unauthorised Construction) Rules, 2018. and later a further application was submitted under the similar Rules promulgated for 2024.

3. Ultimately, the question of regularization was considered by the District Town Planner, Kottayam as evidenced by Ext.P4. In Ext.P4 proceedings of the District Town Planner, while ordering regularization of the construction, the total plinth area of the building was determined as 956.79 Square Meters, whereas, the existing construction was reckoned as 271.74 Square Meters. The regularization was ordered as per Ext.P4 with certain conditions, and the condition regarding the payment of the composition fee payable by the petitioner was to the effect that, the same can be paid by the petitioner only upon removing the encumbrance in the property records, based on an attachment ordered against that property in a civil suit or subject to the final decision to be taken in the said litigation.

4. According to the petitioner, even though an order of regularization was passed as evidenced by Ext.P4, the petitioner could not get the building regularized, as the composition fee stipulated therein could not be remitted on account of the conditions

imposed as per Ext.P4. As of now, the building is remaining as unauthorized construction, despite Ext.P4 order, for all practical purposes. Ext.P4 order was passed on 03.07.2025. In the meantime, the petitioner was issued with Exts.P6 and P7 demand notices, by which, an amount of Rs.18,14,312/- was demanded, which consists of the normal tax for the entire building, along with twice the rate of tax, as contemplated under Section 235AA of the Act. The said demand was made, by treating the entire building of the petitioner as unauthorized. Based on Exts.P6 and P7, revenue recovery proceedings are also initiated as per Ext.P8, by the respondents 4 and 5. This writ petition is submitted by the petitioner in such circumstances, challenging Exts.P6, P7 demand notices and Ext.P8 revenue recovery notices.

5. A detailed counter affidavit is submitted by the respondents 1 and 2, explaining the circumstances under which, Exts.P6 and P7 were issued. According to the respondents, as the petitioner had carried out the construction without any authorization as required under law, the entire building was treated as unauthorized and the property tax along with twice the rate of tax was demanded, as contemplated under Section 235AA of the Kerala Panchayat Raj Act. Thus, the respondents 1 and 2 sought dismissal of the writ petition.

6. I have heard Sri.Liji J Vadakkedom, learned counsel for the petitioner, Sri.K.Mohanakannan, learned standing counsel for the respondents 1 and 2 and Sri.Sayed Mansoor Bafakhy Thangal, learned Government Pleader for the respondents 3 to 5.

7. One of the main contentions raised by the learned counsel for the petitioners, while challenging Exts.P6 to P8 is that, the said demand was raised in violation of the statutory stipulations contained in Section 235AA of the Kerala Panchayat Raj Act. It is pointed out that, the said provision contemplates for imposition of tax at penal rates, i.e., two times of the tax along with regular rates. According to the petitioner, as per the relevant statutory provisions, such a demand is permissible only in respect of the plinth area/part of the building which is constructed unlawfully, whereas, in the present proceedings, merely because of the reason that, some portion of the area was found to be constructed unauthorized, the entire building, inclusive of the building which is constructed with valid permission, was treated as unauthorized and tax was imposed on penal rates. According to the petitioner, such an assessment and imposition of tax is not something contemplated under Section 235AA of the Act. The learned counsel for the petitioner places reliance upon the stipulations contained in Section 235W of the Kerala Panchayath Raj Act to show that, the authority granted to the Secretary to remove the construction is strictly confined to the unauthorized portion of the construction alone, by following the procedure contemplated under the said provision. Thus, the sum and substance of the contentions of the learned counsel for the petitioner is that, the Panchayat is not authorized to collect property tax at penal rates for the entire building, inclusive of the portion of the building which is constructed with valid permits and other sanctions.

8. The learned standing counsel appearing for the 1st and 2nd respondents as well as the learned Government Pleader, stoutly oppose the contentions raised by the learned counsel for the petitioner by pointing out that, the petitioner had derived undue benefits by enjoying unauthorized construction along with the building, which is constructed with authorization, and therefore, the entire building is to be treated as unauthorized. This submission is made mainly because, a portion of the building has already been issued an occupancy certificate and assigned a building number, which enable the petitioner to put the additional construction, made by way of unauthorized construction, to his beneficial use, by availing the services available to the main building. Therefore, it is pointed out that, the penalty imposed on the entire building is justified.

9. I have carefully gone through the statutory provisions contemplated under the Kerala Panchayat Raj Act, 1994 and also the contentions raised by all the parties. Before proceeding to determine the issue, it is profitable to refer to the relevant statutory provisions. Section 235AA of the Kerala Panchayat Raj Act deals with the levy of tax for the building constructed unlawfully, and the said provision reads as follows:

"235AA. Levying of tax for the building constructed unlawfully.- (1) Notwithstanding anything contained in this Act or the rules made thereunder where any person has unlawfully constructed or reconstructed any building, such building shall without prejudice to any action that may be taken against that person, be liable to pay the sum of property tax that would have been paid, had the said building been constructed lawfully, together with twice the amount towards property tax of the building so constructed unlawfully with effect from the date of completion or utilisation of that for any of the purposes mentioned in sub-section (2) of Section 203, whichever is earlier, till the date of demolition of that building.

(2) Nothing contained in sub-section (1) shall preclude the Secretary from proceeding against such person under Section 235W of the Act and the owner shall not have right to get any compensation due to any action taken by the Secretary under this section.

(3) No building number as provided under Section 235 shall be affixed to the building constructed unlawfully and they shall be given special number as prescribed. Any delay in giving special number shall not be a bar to levy property tax retrospectively under sub-section (1).

(4) Secretary shall maintain ward-wise special registersrecording the survey number of the land on which the building has been constructed unlawfully, name and particulars of the owner of the land, special number given to the building, details of the property tax levied and collected for the building.

(5) The Village Panchayat shall not grant permit or licenceto use the building constructed unlawfully and given a special number as provided in sub-section (3) and liable to be proceeded against under Section 235W, for any trade, commerce or industrial purposes or any other purposes and if the Village Panchayat has granted any permit or licence, that shall be reconsidered and cancelled after going notice to the owner of the building and licencee."

10. Malayalam version of the relevant provision reads as follows:

"[235 എഎ. നിയമാനുസൃതമല്ലാതെ നിർമ്മിച്ച കെട്ടിടത്തിന് നികുതി ഈടാക്കൽ, _ (1) ഈ ആക്റ്റിലോ അതിൻകീഴിലോ ഉണ്ടാക്കപ്പെട്ടിട്ടുള്ള ചട്ടങ്ങളിലോ എന്തുതന്നെ അടങ്ങിയിരുന്നാലും ഏതെങ്കിലും ആൾ ഏതെങ്കിലും കെട്ടിടം നിയമാനുസൃതമല്ലാതെ നിർമ്മിക്കുകയോ പുനർനിർമ്മിക്കുകയോ ചെയ്താൽ, അയാൾക്കെതിരെ സ്വീകരിക്കാവുന്ന ഏതെങ്കിലും നടപടിക്ക് ഹാനി കൂടാതെ, കെട്ടിടംപണി പൂർത്തിയാക്കുകയോ അത് 203- വകുപ്പ് (2)- ഉപവകുപ്പിൽ പറയുന്ന ഏതെങ്കിലും ആവശ്യത്തിന് ഉപയോഗപ്പെടുത്തുകയോ, ഇതിൽ ഏതാണോ ആദ്യം വരുന്നത് ആ തീയതി മുതൽ ആ കെട്ടിടം പൊളിച്ചു മാറ്റുന്ന തീയതി വരെ, പ്രസ്തുത കെട്ടിടം നിയമാനുസൃതമായി നിർമ്മിച്ചതായിരുന്നതെങ്കിൽ കൊടുക്കേണ്ടിവരുമായിരുന്ന വസ്തുനികുതിയും അതോടൊപ്പം അതിന്റെ രണ്ടിരട്ടി വരുന്ന തുകയും ചേർന്നുള്ള തുക, അപ്രകാരം നിയമാനുസൃതമല്ലാതെ നിർമ്മിക്കപ്പെട്ട കെട്ടിടത്തിന്റെ വസ്തുനികുതിയായി നല്കുവാൻ അയാൾ ബാദ്ധ്യസ്ഥനായിരിക്കുന്നതാണ്.

(2) (1)- ഉപവകുപ്പിൽ അടങ്ങിയിരിക്കുന്ന യാതൊന്നും തന്നെ, 235 ഡബ്ല്യു വകുപ്പ് പ്രകാരം അങ്ങനെയുള്ള ആൾക്ക് എതിരായി നടപടി എടുക്കുന്നതിൽ നിന്നും സെക്രട്ടറിയെ തടസ്സപ്പെടുത്തുന്നതല്ലാത്തതും ഈ വകുപ്പ് പ്രകാരം സെക്രട്ടറി എടുത്ത ഏതെങ്കിലും നടപടി മൂലം ഏതെങ്കിലും നഷ്ടപരിഹാരം ലഭിക്കുന്നതിന് ഉടമസ്ഥന് അവകാശമുണ്ടായിരിക്കുന്നതല്ലാത്തതുമാണ്.

(3) നിയമാനുസൃതമല്ലാതെ നിർമ്മിക്കപ്പെട്ട കെട്ടിടങ്ങൾക്ക്, 235- വകുപ്പിൽ അനുശാസിക്കുന്ന പ്രകാരമുള്ള കെട്ടിട നമ്പർ നൽകുവാൻ പാടില്ലാത്തതും അവയ്ക്ക് നിർണ്ണയിക്കപ്പെട്ട പ്രകാരം പ്രത്യേക നമ്പർ നൽകേണ്ടതുമാണ്. പ്രത്യേക നമ്പർ നൽകുന്നതിലുണ്ടാകുന്ന യാതൊരു കാലതാമസവും (1)- ഉപവകുപ്പുപ്രകാരം മുൻകാലപ്രാബല്യത്തോടുകൂടി വസ്തുനികുതി ചുമത്തുന്നതിന് തടസ്സമാകുന്നതല്ല.

(4) നിയമാനുസൃതമല്ലാതെ കെട്ടിടം നിർമ്മിക്കപ്പെട്ട വസ്തുവിന്റെ സർവ്വേ നമ്പർ, വസ്തു ഉടമയുടെ പേരുവിവരങ്ങൾ, കെട്ടിടത്തിന് നൽകപ്പെട്ട പ്രത്യേക നമ്പർ, കെട്ടിടത്തിന് ചുമത്തിയതും ഈടാക്കിയതുമായ വസ്തുനികുതി വിവരങ്ങൾ എന്നിവ രേഖപ്പെടുത്തിയ പ്രത്യേക രജിസ്റ്ററുകൾ വാർഡുകൾ തിരിച്ച് സെക്രട്ടറി പരിപാലിച്ച് പോരേണ്ടതാണ്.

(5) നിയമാനുസൃതമല്ലാതെ നിർമ്മിച്ചതും (3)- ഉപവകുപ്പിൽ വ്യവസ്ഥ ചെയ്തിട്ടുള്ള പ്രകാരം പ്രത്യേക നമ്പർ നൽകപ്പെട്ടതും 235 ഡബ്ലിയു വകുപ്പുപ്രകാരമുള്ള നടപടിക്ക് വിധേയമാക്കേണ്ടതുമായ കെട്ടിടങ്ങൾ കച്ചവടത്തിനായോ, വ്യാപാരത്തിനായോ, വ്യവസായ ആവശ്യത്തിനായോ മറ്റേതെങ്കിലും ആവശ്യത്തിനായോ ഉപയോഗപ്പെടുത്തുന്നതിന് ഗ്രാമപഞ്ചായത്ത് അനുമതിയോ ലൈസൻസോ നൽകുവാൻ പാടില്ലാത്തതും, അപ്രകാരം ഗ്രാമപഞ്ചായത്ത് ഏതെങ്കിലും അനുമതിയോ ലൈസൻസോ നൽകിയിട്ടുണ്ടെങ്കിൽ കെട്ടിട ഉടമയ്ക്കും ലൈസൻസിക്കും നോട്ടീസ് നല്കി അത് പുന:പരിശോധിക്കേണ്ടതും റദ്ദ് ചെയ്യേണ്ടതുമാണ്.''

11. Section 235W deals with the demolition or alteration of the building works unlawfully commenced, carrying on or completed; the said provision reads as follows:

"235W. Demolition or alteration of building works unlawfully commenced, carrying on or completed.-(1) Where the Secretary is satisfied that-

(i) the construction or reconstruction or alteration of any building-

(a) has been commenced without obtaining the permissionof the Secretary or in contravention of the decision of the Village Panchayat; or

(b) is being carried on, or has been completed otherwisethan in accordance with the plans, specifications or information on which such permission or decision was based ; or

(c) is being carried on, or has been completed incontravention of any of the provision this Act or any rule or bye-law or order made or issued thereunder or any direction or requisition lawfully given or made under this Act, such rule, bye-law or order, or

(ii) any alteration required by notice issued under Section235 N has not been duly made; or

(iii) any alteration of or addition to any building or anyother work made or done for any purpose in or upon any building has been commenced or is being carried on or has been completed in contravention of the provisions of Section 235-V, he may make a provisional order requiring the owner or the person for whom the work is done, to demolish the work done, or any part of it as, in the opinion of the Secretary, has been unlawfully executed or to make such alteration as may be necessary to bring the work in conformity with the provisions of this Act, bye-laws, rules, direction, order or requisition as aforesaid or with the plans and specifications on which such permission or decision was based, and may also direct that until the said order is complied with, the owner or such person shall refrain from proceeding with the work:

Provided that the Secretary may, on realization of a compounding fee as may be fixed by Government, regularize any construction, re-construction, or alteration of the building, commenced, carried on or completed without getting a plan approved by the Secretary or in deviation of the plan approved by him, if such construction or alteration of the building does not contravene any of the criteria or specifications mentioned in the Act or the rules made thereunder.

(2) The Secretary shall serve a copy of the provisionalorder made under sub-section (1) on the owner or the person for whom such work is done together with a notice requiring him to show cause within a reasonable time, to be specified in such notice, why the order should not be confirmed.

(3) Where the owner or the person for whom the work isdone fails to show cause to the satisfaction of the Secretary, the Secretary may confirm the order or modify the order to such an extent as he may think fit to make and such order shall then be binding on the

owner or the person for whom the work is done and on the failure to comply with the order, the Secretary may himself cause the building or part thereof, demolished, as the case may be, and expenses thereof shall be recoverable from the owner or such person.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), prosecution proceedings may be initiated against the owner or the person for whom the work is done.

(5) Where the Government is satisfied that theconstruction, re-construction or alteration of any building has been carried out in violation of any of the provisions of this Act or any rule made thereunder or any direction lawfully given by the Government or Secretary, the Government may direct the Secretary of the Village Panchayat to cause the demolition of such construction, reconstruction or alteration and if such direction is not complied within the time limit specified in such direction, the Government may arrange its demolition and the cost there of shall be recovered from the Village Panchayat."

12. While evaluating the scope of the aforesaid provisions, the stipulations contained in Section 235V of the Kerala Panchayat Raj Act is also relevant, which deals with the application of the provisions to alterations and additions, and the said reads as follows:

"**235V. Application of the Provisions to alterations and additions.**- The provisions of this Act and of any rule or bye-law made thereunder relating to construction and re-construction of buildings shall also be applicable to any alteration thereof or addition thereto:

Provided that repair works using materials of the same nature and value to keep the building as such without enhancing its value and without changing its occupancy and use and which do not affect the position or dimension of a building or any room therein shall not be deemed to be an alteration or an addition for the purpose of this section. Changing of roof or construction of walls by using a different material and other similar works which enhance the value of the building to any extent will not be treated as repair but as a new construction."

13. On carefully going through the statutory stipulations contained in Section 235AA of the Act, it is to be noted that, Sub Section (1) thereof, specifically uses the expression *"without prejudice to any action that may be taken against that person, be liable to pay the sum of property tax that could have been paid, had the said building been constructed lawfully, together with twice the amount towards property tax of the building* ***so constructed unlawfully*** *with effect from the date of completion or utilization of that for any purposes mentioned in Sub Section (2) of Section 203, whichever is earlier, till the date of demolition of that building."*

14. Thus, a careful reading of the aforesaid provision would clearly indicate that, the authority provided as per the said provision to impose tax along with the additional tax at twice the rate of tax, is in respect of the building **"so constructed unlawfully"**. While trying to understand the real purport and intention of the said provision, the expression *"so constructed unlawfully"* will have to be given due emphasis, which would lead to a definite conclusion that, the purpose of the same is to enable the statutory authority of the Panchayat to impose tax in respect of the unauthorized portion of the building, i.e. *constructed unlawfully*. In this regard, the word meaning of 'so' becomes crucial and is discussed in Corpus Juris Secundum, Words and Phrases, (Vol 39, pg. 542), which reads thus;

The word "so" means "hence" and "therefore," when it is used to connect that which is an illustration of or conclusion from that which is stated before. (Clem v. State, 33 Ind. 418, 431)

The word "so" in automobile policy providing that if insured acquires ownership of another automobile and "so" notifies insurer within 30 days following delivery of the other automobile to insured the policy will apply to the other automobile as of delivery date refers back to the words "acquires ownership." (Standard Materials v. Massachu- setts Fire & Marine Ins. Co., Ohio Com.Pl., 94 N.E.2d 809, 813.)

"So," as defined by Webster, means "in the same manner as has been stated, in this or that condition or state, under these circumstances; in this way, with reflex refer- ence to something which is asserted," and is so to be construed when used in an indictment. (Blanton v. State, 24 P. 439, 441, 1 Wash. 265.)

The word "so," as used in a bond given by a bank and sureties to the state treasurer, reciting that such treasurer would deposit certain moneys in the bank in question, and that the bank should keep, etc., all "said sums so deposited or to be deposited as afore- said," points to something previously mentioned in the instrument, and the sureties on the bond are liable for deposits in the bank at the time the bond was executed. Kephart v. Buddecke, 80 P. 501, 503, 20 Colo.App. 546.

15. Similarly **Prem & Saharay's Judicial Dictionary of Words And Phrases (Vol. IV, 2nd Edn 2016, pg. 4539),** reads thus;

'So' when used in connection with something to be done, e.g., so completed, or so altered imports the doing of the thing in the manner and so as to satisfy the requirements previously pre- scribed. G.W. Ry. v. Halesen Ry., 52 LJ QB 479; Dyke v Gower, (1892) 1 QB 220. The word 'so' in section 35 of the Ct. of Wards Act refers to the particular method of taking charge and the phrase 'possessions shall have been so taken' should be construed to mean when pos- session shall have taken by an order directing possession to be taken. Gopeshewar Parsad 'v State, AIR 1951 Pat 570 (574).

16. Thus, in the light of the specific stipulations contained in Section 235AA of the Act, it may not be possible for the Panchayat to impose tax liability with additional tax at the rate of two times of the tax, in respect of the portion of the building, which is constructed with valid permit and is already subjected to assessment under the provisions of the Act. It is to be noted in this regard that, while the liability of additional tax is imposed on the building **"so constructed unlawfully",** nowhere in the Act, it is stipulated, either specifically or with necessary implication, that, if any portion of the building is found to be constructed without authorisation, the entire building has to be treated as unauthorized.

17. The said intention is also clear from the stipulationscontained in Section 235W of the Act, that deals with demolition or alteration of the building works unlawfully commenced, carried on or completed. It is to be noted that, in Sub section (2) of Section 235AA of the Act, it is specifically stipulated that, nothing contained in sub section (1) shall preclude the Secretary from proceeding against such person under Section 235W of the Act and the owner shall not have right to get any compensation due to any action taken by the Secretary in this Section.

Therefore, while incorporating Section 235AA, the legislature was conscious about the rights available to the Secretary/Panchayath to initiate appropriate proceedings for demolishing the building by invoking the powers under Section 235W. On examining the stipulations contained in Section 235W, particularly sub Section (1) (iii), it can be seen that, the same specifically provides that, the demolition of the building or the work contemplated under the said provision, is confined to the work done or any part of it, as in the opinion of the Secretary, has been unlawfully executed or to make such alteration as may be necessary to bring the work in conformity with the provisions of this Act, by-laws, rules, direction, order or requisition as aforesaid or with the plans and specifications on which such permission or decision was based, and may also direct until the said order is complied with, the owner or such person shall refrain from proceeding with the work. Thus, such provision specifically envisages demolition of the area which is unlawfully constructed. Therefore, it is clear that, the actions proposed in Section 235AA and 235W of the Act were in respect of the portion of the building which is constructed without any authorization and in violation of the provisions of the Kerala Panchayat Raj Act and the Rules framed thereunder. Therefore, I find merits in the submission made by the learned counsel for the petitioner that, imposing tax liability at penal rates on the entire building, inclusive of the authorized portion of the building, is not supported by any statutory provision, either specifically or impliedly, and hence, not sustainable.

18. There is yet another aspect that fortifies the aforesaid view. As far as the tax and the additional tax contemplated under Section 235AA of the Act is concerned, the same is penal in nature and therefore, it requires very strict interpretation. The effect of the same is that, unless there is a specific provision enabling the authorities concerned to impose a tax at penal rates on the authorized portion of the building as well, such liability cannot be imposed, in respect of that portion of the building. As rightly pointed out by the learned counsel for the petitioner, the principles enshrined in Article 265 of the Constitution of India are also to be pressed into service, while considering such question, as the said Article clearly stipulates that, without any authority of law, no tax can be imposed. Here in this case, in respect of the property that is constructed by the petitioner with authorization, the petitioner has paid tax as per the rates stipulated, since it was already subjected to valid assessment as per the provisions contemplated under the Act. Therefore, the mere reason that, additional constructions were carried out along with the said building, by itself would not enable the respondents to subject the authorized portion of the building again, for assessment, in the absence of any specific provision authorizing the authorities to do so. As mentioned above, there is no stipulation in the Kerala Panchayat Raj Act that, making additional construction without authorization, on the building constructed with authorization, would enable the Panchayat to treat the entire building as unauthorized.

19. In this regard, the statutory stipulations contained section 5(4) in Kerala Building Tax Act, 1975 is also relevant and the said provision reads as follows:

> “Section 5 (4) Where the plinth area of the building, the construction of which is completed after the appointed day is subsequently increased by new extensions or major repair or improvement, building tax shall be computed on the total plinth area of the building including that of the new extension or repair or improvement and credit shall be given to the tax already levied and collected, if any, in respect of the building before such extension, or repair or improvement.”

20. From the above, it is clear that, whenever the additional construction enables the authorities to have a reassessment of the entire building inclusive of the area of the building constructed already, the same has been specifically stipulated in the enactment itself, apparently in fulfillment of the requirement of Article 265 of the Constitution of India. However, when it comes to the relevant provisions of the Kerala Panchayat Raj Act, such a statutory provision that authorizes such reassessment is absent, which is very conspicuous.

21. Another important aspect to be noticed in connection with the above is that, as pointed out by the learned counsel for the petitioner, Section 235V of the Kerala Panchayat Raj Act specifically stipulates that, the provisions of the Act or any rule or bye-law made thereunder relating to construction and reconstruction of buildings shall also be applicable to any alteration thereof or addition thereto. Since all the provisions of the Act and the Rules were made applicable to the alterations and additions to the building as well, there cannot be any dispute that, even for initiating proceedings for imposing tax in respect of the additional construction, the excluded area which is constructed without authorization will have to be identified, assessed and demanded tax as contemplated under the Act. Such an identification is absolutely necessary for invoking powers under Section 235W also, since the said provision enables the authority concerned to remove the construction which is made without authorization. Therefore, by virtue of Section 235V of the Act, the provisions including the provisions relating to assessment of tax would also be applicable to the additional construction, irrespective of the question whether the same was constructed with authorization or not.

22. In this regard, it is to be noted that, sub Section (3) to Section 235AA specifically stipulates that, a special number shall be assigned to the building constructed without authorization and it is also provided therein that, any delay in giving special number shall not be a bar to levy property tax retrospectively under sub section (1). Thus, assigning a special number to the building is necessary for imposing liability as contemplated under sub section (1) of Section 235AA of the Act. This would mean that, when an authority detects an unauthorized alteration of a building by way of additional construction to the existing building which is constructed with authorization, such additional construction will have to be identified and a special number will have to be assigned to the same. Evidently, going by the scheme of Section 235AA, read along with the other provisions as referred to above, it can be seen that, the special number is being assigned, not to enable the building owner to avail any services for the said building, but the purpose of it is confined to the imposition of tax, with additional tax as contemplated under sub section (1) of Section 235AA and also to initiate proceedings to demolish that portion of the building under section 235W of the Act.

23. Therefore, when all these provisions are read together, the only conclusion possible is that, the assessment will have to be carried out in respect of the additional area constructed without authorization, by following the procedure contemplated in this regard and thereafter, the authority shall proceed to determine the tax, as contemplated under sub Section (1) of Section 235AA, inclusive of the additional tax at the rate of two times of the tax along with normal rate in respect of the portion of the building so constructed unlawfully. To be precise, the procedure as mentioned above, which is revealed through various provisions referred to above, would clearly indicate that, an assessment by adding the plinth area of the building unauthorizedly constructed to the authorized portion of the building and making an assessment for the entire building at penal rates/additional rates as contemplated under sub section (1) of Section 235AA is something which is not envisaged in the Act and therefore, not legally sustainable.

24. Of course, the learned Government Pleader pointed out that, since the petitioner had availed the benefits of the authorized building, after making the unauthorized constructions, the demand is justified. It is true that the petitioner may have availed undue benefits on account of such unauthorized construction. However, as far as the assessment of tax and imposition of tax at penal rates are concerned, the same is governed by the stipulations contained in Section 235AA of the Act. So long as the said provision does not contemplate any specific authorization upon the authorities concerned, to impose tax at penal rates, in respect of the authorized portion of the building, no tax can be collected for the same,

irrespective of the question whether the petitioner had derived any benefit out of it, on account of additional construction being attached to the authorized portion of the building. To be precise, such a criterion is not something relevant for the purpose of assessment of tax with additional tax as contemplated in Subsection (1) of Section 235AA of the Act, in the absence of any specific enabling provision. Therefore, I am not inclined to accept the said contention of the learned Government Pleader.

25. Another aspect to be noticed is the question regardingthe requirement of the punishment being proportionate to the wrong committed. As observed above, since section 235AA provides for tax at the rate of two times of the normal rates along with the normal rate of tax, it is penal in nature. In other words, a wrong committed by the owner of the building is to be imposed with a penalty. It is an accepted principle of law that punishment should be proportionate to the wrong committed and there must be a rational nexus between the two. What could be the relevant factors for determining the proportionality, is depending upon the facts and circumstances of each case. In **Bhagat Ram v. State of H.P., (1983) 2 SCC 442, ,** Hon'ble Apex Court held;

"15. It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

26. However, under normal circumstances, unlessspecifically authorized by a provision of law, it may not be possible for the statutory authorities to impose a penalty, in respect of an act, which the party had carried out with proper sanction of law, as rightly held in a catena of decisions including **Commissioner of Wealth Tax, Gujarat III Ahmedabad v. Ellis Bridge Gymkhana [(1998) 1 SCC 384], Commissioner of Income-tax, Madras v. Kasturi and Sons Ltd., [AIR 1999 SC 1275], Hansraj and Sons v. State of Jammu & Kashmir and others, [AIR 2002 SC 2692],The State of Bombay v. Automobile and Agricultural Industries Corporation, Bombay, [(1961) 12 STC 122]. In Vijay Singh v. State of U.P., [(2012) 5 SCC 242],** it was observed as;

21. Undoubtedly, in a civilised society governed by the Rule of Law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in criminal jurisprudence to this effect is prescribed in the legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law.

27. Similarly in ***A.V. Fernandez v. State of Kerala, [(1957) 1 SCC 560]*** it was observed as:

*26. The answer given by the learned counsel for the appellant to the above reasoning was that in fiscal statutes what you have got to look to is not the spirit of the statute but the letter of the law; and if you could not bring a particular tax within the letter of the law, the subject could not be made liable for the same. Our attention was drawn in this connection to the observations of **Lord Russell of Killowen in IRC v. Duke of Westminster [IRC v. Duke of Westminster, 1936 AC 1 at p. 24 (HL)]** : (AC p. 24)*

"... I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if, in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case."

29. It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the *provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made thereunder before we can come to the conclusion that the appellant was liable to assessment as contended by the Sales Tax authorities.*

28. While adopting the views as expressed above, this courthas taken note of the well settled principles of law that, as far as the taxation statutes and penal statutes are concerned, it require strict interpretation, and what can be levied by the authorities is the tax specifically provided in the relevant Act, without any additions and deletions. *In* ***Commr. of Customs v. Dilip Kumar & Co., [(2018) 9 SCC 1]*** it was observed as:

"*24. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution ["**265. Taxes not to be imposed save by authority of law**.—No tax shall be levied or collected except by authority of law."] prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.*

34. The passages extracted above, were quoted with approval by this Court in at least two decisions being CIT v. Kasturi and Sons Ltd. [CIT v. Kasturi and Sons Ltd., (1999) 3 SCC 346] and State of W.B. v. Kesoram Industries Ltd. [State of W.B. v. Kesoram Industries Ltd., (2004) 10 SCC 201] (hereinafter referred to as "Kesoram Industries case", for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:

"(i) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

(ii) Before taxing any person, it must be shown that hefalls within the ambit of the charging section by clear words used in the section; and

(iii) If the words are ambiguous and open to twointerpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."

29. If the aforesaid principles are made applicable to this case, it has to be held that, as section 235AA of the Act does not specifically contemplate for assessment of tax at additional/penal rates in respect of the authorized portion of the building, no demand of tax for such portion of building can be made.

30. When coming to the facts and circumstances of the case, it is to be noted that, as of now, the petitioner is aggrieved by Exts.P6, P7, and P8, which are the demand notices and revenue recovery notices. Exhibit P6 and P7 were issued by the 2nd respondent, whereas, Ext.P8 was issued by the 4th and 5th respondents as part of revenue recovery proceedings for realizing the amounts specified in Exts.P6 and P7. In the light of the findings and observations made by this Court in this judgment, the assessment of tax along with the additional tax as contemplated under Subsection (1) of Section 235AA of the Act, so far as

it relates to the authorized portion of the building is not correct and hence the matter requires reconsideration.

In such circumstances, this writ petition is disposed of, quashing Exts.P6, P7 and P8, by declaring that, the statutory stipulations contained in section 235AA of the Kerala Panchayat Raj Act, 1994, does not enable the 1st respondent Grama Panchayat to impose any additional tax liability upon the authorized portion of the building. Consequently, the 2nd respondent is directed to initiate fresh proceedings for 0reassessment, under Section 235AA of the Act, confining the assessment to the unauthorized portion of the building of the petitioner. However, as there is some dispute with regard to the actual authorized plinth area, in view of the fact that, in Ext.P3, the total authorized area is specified as 116 Sq.M., whereas in Ext.P4, the existing area is specified as 271.74 Sq.M, it is ordered that, while making a fresh assessment, it shall be open to the 2nd respondent to determine the actual plinth area of the authorized construction as well, and the liability upon the petitioner shall be fixed accordingly. The assessment as referred to above shall be finalized after issuing notice to the petitioner and giving him an opportunity for being heard.

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