IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 9TH DAY OF SEPTEMBER 2015/18TH BHADRA, 1937

WP(C).No. 956 of 2007 (L)

PETITIONER(S):

MANJU RAMESH,
SAMTHRIPTHY, EAST FORT,
TRIVANDRUM,

BY ADV. SRI.G.S.REGHUNATH.

RESPONDENT(S):
----

1. THE CORPORATION OF TRIVANDRUM,
   REP. BY ITS SECRETARY, TRIVANDRUM.

2. THE STANDING COMMITTEE FOR APPEALS ON TAXATION,
   CORPORATION OF TRIVANDRUM,
   TRIVANDRUM.

3. STATE OF KERALA,
   REP. BY ITS SECRETARY TO GOVT. (LOCAL SELF GOVT.),
   SECRETARIAT, TRIVANDRUM.

R1 & R2 BY ADV. MR.N. NANDAKUMARA MENON, SC.
R3 BY SR. GOVT. PLEADER SRI.K.K. SAIDALAVI.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/09/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs

WP(C).No. 956 of 2007 (L)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE POWER-OF ATTORNEY EXECUTED BY THE PETITIONER IN FAVOUR OF G. RAMESAN.
EXT.P2	COPY OF THE ORDER NO.ZR1/R14/60065/02 DATED 29/10/2002 OF THE 1ST RESPONDENT.
EXT.P3	COPY OF THE ORDER NO.NIL DATED 07/01/2004 ISSUED BY THE 1ST RESPONDENT.
EXT.P4	COPY OF THE ORDER NO.45167/B4/05/LOCAL SELF GOVT. DATED 24/10/2005.
EXT.P5	COPY OF THE TAX RECEIPT DATED 21/01/2004 IN THE NAME OF THE PETITIONER.
EXT.P6	COPY OF THE JUDGMENT IN WP(C).NO.4144/2006 OF THIS HONOURABLE COURT.
EXT.P7	COPY OF THE ORDER DATED 22/10/2006 IN RP NO.43/2006 AND 2 CONNECTED CASES OF THE 3RD RESPONDENT.
EXT.P8 (SERIES)	COPY OF THE RECEIPTS DATED 15/01/2004, 17/02/2004, 13/03/2004, 03/05/2004, 15/06/2004, 12/07/2004, 11/08/2004, 06/09/2004, 06/10/2004, 27/10/2004, 01/11/2004, 04/12/2004.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.V.RAMAKRISHNA PILLAI, J.

= = = = = = = = = = = = = = = = = = =

W.P(C) No.956 of 2007

= = = = = = = = = = = = = = = = = = = =

Dated this the 9th day of September, 2015

JUDGMENT

The petitioner is the owner of a building bearing T.C No.37/856(12). The yearly property tax assessed for the said building was ₹6,388/-. As per Ext.P2, the 2nd respondent increased the property tax to ₹95,220/-. Appeal was filed before the 2nd respondent and the property tax was reduced to ₹41,670/-. The petitioner filed a revision before the Government. When the Tribunal for Local Self Government was constituted, all appeals pending before the Government were transferred to the Tribunal. However, the revision filed by the petitioner was returned to her.

2. The petitioner points out that as per Ext.P6, this Court directed the Tribunal for Local Self Government Institutions to adjudicate the matter on merits after giving an opportunity to the petitioner to substantiate her contentions. The Tribunal once again

took up the matter and passed an order on 22.9.2006. The Tribunal refused to consider the documents produced by the petitioner and relief on surmises to hold that Mandapam tax is fixed at ₹41,670/- per annum. According to the petitioner, this calculation based on mere surmises is *per se* illegal, arbitrary and wrong. It is with this background, the petitioner has approached this Court.

3. In the statement filed by the respondents, it was contended as follows:

After a detailed study, it was felt by the corporation that the rate of tax prevailing for all Kalyanamandapams was very low in comparison to the increase of the rent charged on the mandapams by the assessee during the last several years. The standing committee on taxation and finance decided to revise the tax of all Kalyanamandapams in the entire corporation limit and, therefore, the tax due on the mandapams belonging to the petitioner was also concerned. The taxation committee heard the petitioner is person and considerably reduced the tax from ₹95,220/- to ₹41,670/-. Therefore, it is stated that a considerable relief has been granted to the petitioner by the taxation committee in Ext.P3 order.

It was further stated that the Tribunal has considered all the aspects of the matter and after considering the various contentions raised by the petitioner, passed Ext.P7 order modifying the order passed by the taxation committee. It was also stated that Ext.P7 order passed by the Tribunal does not suffer from any illegality or irregularity and no legal grounds were made out by the petitioner to interfere with Ext.7 order passed by the Tribunal.

It was further stated that Ext.P7 order passed by the Tribunal is not suffering from any errors apparent on the face of record for interference by this Court under Article 226 of the Constitution and the petitioner is not entitled to any of the reliefs prayed for in the writ petitioner. Therefore, they prayed for a dismissal of the writ petition.

4. Arguments have been heard.

5. According to the petitioner, the building in question is very old structure and no substantial improvements or additions were made to the building. It was pointed out that no attached bathrooms and other facilities are there. It is the further case of the petitioner that the building is not on the side of the main road and the building is thatched with asbestos sheets. According to the petitioner, the building could not be rented out for more than 20 days in a year and the same has been proved by the documents produced by the petitioner. However, according to the petitioner, all these evidences were illegally ignored.

6. It was pointed out that the learned Tribunal failed to note that the petitioner was paying only ₹6,388/- per year before tax revision and the enhancement to ₹41,670/- is more than 800% increase from the original amount. It was further pointed out that the method adopted by the learned Tribunal for fixing the property tax is

absolutely illegal. The petitioner had approached this Court earlier with W.P(C) No.4157 of 2006 which was disposed of by Ext.P6 judgment wherein this Court held that having regard to the volume of amounts involved, it is in the interest of the Corporation that the Tribunal expedites consideration of the revision after it receives the same and it shall accordingly dispose of the same within a period of six months from the date of receipt of the revisions from the Government. It was on the basis of that the Tribunal has considered the issued and passed Ext.P7.

7. Considering the evidence on record, the learned Tribunal entered into the finding as discussed in paragraphs 12 and 13 of the impugned judgment which read as follows:

> "12. Ext.P1 is the counter foils of the receipts pertaining to the Kalyana mandapam bearing T.C No.37/848 belonging to the revision petitioner in R.P 43/2006 the property tax of which was re-fixed as Rs.49,185/- with effect from the first half of 2002-03 as per the decision in the Appeal challenging the revision made by the Secretary as per the Order dated 29.10.2002. it is discerned from

Ext.P1 that the rent of that Kalyana Mandapam during the year 2002 was Rs.4,900/- per day. The counsel for the Counter Petitioners has not disputed the correctness or genuineness of Ext.P1 or challenged the petitioner's case that the rent in force during 2002 was Rs.4,900/-. The tax of the building bearing T.C No.37/848 on calculation as per Rule 6(4) of the Building Tax Rules taking the daily rent as Rs.4,900/- and that it was let out for 100 days in a year would come to Rs.44,100/- only whereas the tax fixed by the 2nd Counter Petitioner in the Appeal was Rs.49,185/-. The Counter Petitioners have not adduced any evidence to show that the daily rent of the Kalyana Mandapam belonging to the petitioner in Revision Petition No.43/2006 was more than Rs.4,900/- or that it was being let out for more than 100 days in a year. In the absence of any such evidence and in view of Rule 6(4) of the Building Tax Rules governing property tax of Kalyana Mandapams in Panchayat area, the provisions of which are found to be extendable for the assessment of the Kalyana Mandapams in the area of the Counter Petitioner Corporation also it can be concluded that its property tax would come to Rs.44,100/- only and therefore I find that the fax fixed by the Secretary of the Counter Petitioner Corporation for the Kalyana Mandapam bearing T.C No.37/848 belonging to the petitioner in Review Petition No.43/2006 as modified by the 2nd Counter Petitioner in the appeal challenging that order are excessive and being so it is liable to be set aside and the tax of that Kalyana Mandapam is to be fixed as Rs.44,100/-.

> 13. It is seen that the Secretary of the Counter Petitioner Corporation has revised the property tax of the petitioner's Kalyana Mandapams as per the Order dated 29.10.2002 with effect from the first half of 2002-03. The Counter Petitioners have not brought to my notice any provision of law empowering revision of property tax with retrospective effect and in the absence of any such provision, the revision made on 29.10.2002 would take will take effect only from the second half of 2002-03. Therefore I find that the revision made by the Secretary of the Counter Petitioner Corporation in respect of the Kalyana Mandapams involved in Revision Petition No.44/2006 and 45/2006 as modified by the 2nd Counter Petitioner will take effect only from the second hald of 2002-03 and that the property tax fixed by this tribunal in relation to the building involved in Revision Petition No.43/2006 also will take effect only from the second half of 2002-03."

8. On the basis of the above, the learned Tribunal found that the tax fixed by the counter petitioner i.e., the respondent corporation in spite of a building is not liable to be interfered except to the extent that it would take effect only from the second half of 2002-03.

9. The entire matter has been considered by the learned Tribunal in detail and have arrived at the impugned order. The

answers given by the learned Tribunal on questions of facts involved cannot interfered in a writ petition like this. Therefore, this Court is of the view that the petitioner is not entitled to the relief prayed for.

In the result, the writ petition fails and accordingly, it is dismissed.

A.V.RAMAKRISHNA PILLAI
JUDGE

krj