IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 5198 of 2006 (R)

PETITIONER(S):

M.C.THOMAS, S/O.CHACKO,
MANNEKKOTTU HOUSE, MARIYATHURUTHU, P.O.AYMANAM
KOTTAYAM DT.

BY ADVS.SRI.MATHEW JOHN (K)
SRI.SUJESH MENON V.B.

RESPONDENT(S):

1. THE AYMANAM GRAMA PANCHAYATH,
(SPECIAL GRADE) AYMANAM P.O., KOTTAYAM DT.
REPRESENTED BY THE SECRETARY.

2. THE PRESIDENT AYMANAM GRAMA PANCHAYAT
(SPL.GRADE) AYMANAM POST, KOTTAYAM DT.

ADDL.R3 IMPLEADED

THE STATE OF KERALA REP. BY THE SECRETARY
THE GOVT. OF KERALA
LOCAL SELF GOVT. DEPARTMENT
SECRETARIAT, TRIVANDRUM

IS IMPLEADED AS ADDL.R3 AS PER ORDER DT.22.2.06 IN WPC 5198/06

R,R1 BY ADV. SRI.T.I.ABDUL SALAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 5198/2006

PETITIONER'S EXTS:

EXT.P1: A TRUE COPY OF THE CERTIFICATE ISSUED BY THE 1ST RESPONDENT DT.30.12.1998

EXT.P2: -DO- OF RECEIPT DT.19.8.2004 EVIDENCING PAYMENT OF TAX

EXT.P3: -DO- OF THE RECEIPT DT.26.10.2005 FOR PAYMENT OF TAX FOR RS.700/-

EXT.P4: -DO- NOTICE DT.10.2.2006 BY THE 1ST RESPONDENT

JJ /TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO. 5198 OF 2006

Dated this the 10th February, 2015.

JUDGMENT

The petitioner has filed this writ petition challenging Ext.P4 order passed by the first respondent. As per Ext.P4, a building constructed by the petitioner has been directed to be demolished within a period of fifteen days of receipt of such notice.

2. According to the petitioner, before commencement of construction of the building the petitioner had been issued with Ext.P1 certificate dated 30.12.1998. The only condition stipulated therein was that, the provisions of Section 220(b) of the Kerala Panchayat Raj Act, 1994 (the 'Act' for short) should be complied with. The petitioner constructed a building acting on the strength of Ext.P1. The same was numbered as VIII/846 and was assessed to tax which the petitioner has paid

as per Ext.P2. Ext.P2 is dated 19.8.2004. Thereafter in the year 2005 the petitioner added an additional floor to the building. At that time since the Kerala Municipality Building Rules had not been made applicable to the Panchayat, no further permission was required to be obtained. The said building was also numbered by the Panchayat as No: VIII/846A. The building tax was assessed on the same which the petitioner had paid as per Ext.P3 dated 23.6.2005. It was thereafter that Ext.P4 notice was issued.

3. It is pointed out by Adv.Mathew John who appears for the petitioner that, Ext.P4 has been issued in purported implementation of a circular dated 26.12.2005 issued by the Government. The petitioner's construction had been completed even before the issue of such circular as evident from Ext.P3. Therefore, the said circular is not applicable. The petitioner had complied with the mandate of Section 220 (b) of the Act. Therefore, there is no violation of any Rule on the basis of which Ext.P4 could be enforced against his

construction. He therefore seeks the issue of appropriate orders quashing Ext.P2.

4. Adv.T.A.Abdul Salam appears for the first respondent. A counter affidavit has also been filed. According to the first respondent, it is true that the petitioner was issued with Ext.P1 consent letter. However, the building constructed by the petitioner on the strength thereof was subsequently demolished by him. He had put up another building without any permission . It is the said construction that has been directed to be demolished by Ext.P2. According to the counsel it is the new construction that was numbered as VIII/846A. It is therefore contended that Ext.P4 is in order and not liable to be interfered with.

5. Heard. Ext.P1 is the consent issued by the first respondent permitting the petitioner to put up his building. The only condition therein is that, the space required to be left out as per Section 220(b) of the Act should be maintained. There is no case for the first respondent that the petitioner

has violated the said provision. Ext.P2 shows that, the petitioner's building had been assessed to tax and that the petitioner had paid the tax. Ext.P3 shows that, the petitioner has paid tax in respect of another building which has been numbered as VIII/846A. Ext.P3 is dated 26.10.2005. The contention of the first respondent that, the petitioner had demolished his earlier construction and had put up a fresh construction, lacks conviction. If the earlier construction had been demolished and a new construction put up, it was not necessary for the first respondent to have allotted the same number to the new building. In the present case the number allotted is VIII/846A. Such a number is usually allotted to an addition made to an existing construction that has already been numbered by the Panchayat. For the above reason, the case pleaded by the petitioner appears to be more probable. Ext.P3 shows that the petitioner had paid the building tax in respect of the building numbered as VIII/846A on 26.10.2005. Ext.P4 is dated 10.2.2006. The circular referred to therein is dated 26.12.2005. The petitioner's building was in existence prior to the date of issue of the said circular having been assessed to tax by the first respondent as evident from Ext.P3. Therefore, I do not find any justification for the issue of Ext.P4. No violation is pointed out in Ext.P4. For the above reasons, Ext.P4 is unsustainable.

In view of the above this writ petition is allowed. Ext.P4 is set aside. It is held that the petitioner's construction is legal.

Sd/-
K. SURENDRA MOHAN
Judge

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