IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 20TH DAY OF FEBRUARY 2015/1ST PHALGUNA, 1936

WA.No. 356 of 2015 () IN WP(C).24155/2007

AGAINST THE ORDER/JUDGMENT IN WP(C) 24155/2007 of HIGH COURT OF KERALA DATED 16-12-2014

APPELLANT(S)/PETITIONER IN WPC:

LEELA JOSE
MALIKACKAL PUTHENVEEDU, PALACE WARD
KRISHNAPURAM VILLAGE, ALAPPUZHA DISTRICT.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SRI.ARUN BOSE

RESPONDENT(S)/RESPONDENT IN WPC:
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1. THE DISTRICT COLLECTOR, ALAPPUZHA
PIN - 688 001.

2. THE R.D.O.
CHENGANNUR, PIN - 689 121.

3. THE TAHSILDAR
KARTHIKAPPALLY TALUK, ALAPPUZHA DISTRICT
PIN - 688 001.

BY SRI.LIJU V.STEPHEN, SR.GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

....

W.A.No.356 of 2015

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Dated this the 20th day of February, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Admitted. Learned Government Pleader takes notice for the respondents. Service complete.

2. Heard finally, on consent of parties.

3. The only issue is as to whether the extent of relief granted to the petitioner in terms of the contents of paragraph No.5 of the impugned judgment calls for modification.

4. Petitioner has a building, the plinth area of which is 410 M^2. Beyond the plinth area of 278.78 M^2, a building becomes liable for levy of luxury tax in terms of Section 5A of the Kerala Building Tax Act, 1975, "Act", for short. There is no dispute now as

regards the tax payable under Section 5 of the Act. That is a one time payment. The appellant-petitioner has availed installment facility for that. The learned single Judge has left open the issue relating to the question of luxury tax in terms of Section 5A of the Act. However, the words of paragraph No.5 of the impugned judgment tend to indicate that what is left open by the learned single Judge is only regarding the issue as to the plinth area of the building. But the fundamental plea on which the appellant had moved this Court after her statutory appeal was dismissed as belated, is that the building was actually completed before 01.04.1999 and, therefore, Section 5A is not attracted as that provision came into operation only from 01.04.1999. Under such circumstances, we are of the view that ends of justice require that the issue as to the date of completion of the building is also to be left open in relation to any question regarding levy of luxury tax in terms of Section 5A of the Act as regards the building in question. We do so. The impugned judgment of the learned single Judge is modified to the aforesaid extent. The proceedings impugned in the writ petition, insofar as it relates to Section 5A of the Act, will stand quashed. The writ appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

jg