IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WA.No. 503 of 2015 () IN WP(C).4170/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 4170/2015 of HIGH COURT OF KERALA DATED 10-02-2015

APPELLANT(S)/PETITIONER:

M/S. SOUTHERN INVESTMENTS PVT. LTD.,
HHYS BUILDING, 1ST FLOOR, RAJAJI ROAD
KOCHI-682018, REP. BY ITS DIRECTOR OPERATIONS
JACOB CHANDY.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)
SRI.ENOCH DAVID SIMON JOEL
SRI.S.SREEDEV
SRI.RONY JOSE
SRI.GEORGE A.CHERIAN

RESPONDENT(S)/RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF REVENUE,
SECRETARIAT
THIRUVANANTHAPURAM-695 001.

2. THE DISTRICT COLLECTOR,
KOZHIKODE-673 001.

3. THE TAHSILDAR,
KOZHIKODE TALUK, KOZHIKODE-673 001.

BY DR.SEBASTIAN CHAMPAPPILLY, SPL. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
K.HARILAL, JJ.

....

W.A.No.503 of 2015

....

Dated this the 2nd day of March, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Admitted. Learned Special Government Pleader for the Department of Commercial Taxes takes notice for the respondents. Service complete.

2. Heard finally on merits, on consent of parties.

3. Appellant – writ petitioner challenges Ext.P4 assessment order issued under the provisions of the Kerala Building Tax Act, 1975, 'Act', for short, by invoking writ jurisdiction. The plea of the appellant was that it is a builder and, therefore, is not liable to satisfy any demand under the provisions of the Act. The learned single Judge found that Ext.P4 assessment order has been issued by considering the materials available and the questions raised are mixed questions of facts and law and, therefore, could not be pleaded in writ petition. The learned Judge held that there was an

effective statutory alternate remedy by way of appeal and, hence, relegated the writ petitioner to take recourse to such appellate remedy.

4. Having heard the learned counsel for the appellant and the learned Special Government Pleader, we think that Ext.P4, insofar as it relates to other owners of the buildings, is a comprehensive one and it deserves to be said that relevant factors in relation to those who had filed returns have been duly considered. We also take note of the fact that Ext.P4 contains the statement that repeated notices were issued to the builder, however that, no documents were produced by the builder to substantiate any exclusion from assessment. However, it also needs to be noticed that an opportunity of hearing at the hands of the assessing authority would be a better course of action in the case in hand, having regard to the nature of consideration already made by that authority in relation to other assessees, who are governed by Ext.P4 order of assessment. Under such circumstances, we are inclined to take the view that the appellant should be given an

opportunity to meet the proposal for assessment before the assessing authority itself, however on terms.

In the result, the impugned judgment is vacated and it is ordered that the appellant-writ petitioner will be given an opportunity to place documents and written submissions and will also be entitled to an opportunity of oral hearing by the assessing authority, namely, the jurisdictional Tahsildar, if the appellant remits an amount of ₹10,000/- (Rupees ten thousand only) in the Treasury, as costs, within a period of two weeks from today. If remittance as above is made, the assessing authority will hear the appellant-writ petitioner in the light of what is stated above and modify Ext.P4 assessment, as may be found necessary, in relation to the writ petitioner - builder. This writ appeal is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(K.HARILAL, JUDGE)

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