IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WA.No. 2424 of 2015 () IN WP(C).6481/2014

APPELLANT(S)/RESPONDENTS IN THE WPC:
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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT,
   REVENUE DEPARTMENT, THIRUVANANTHAPURAM-695 001.

2. THE TAHSILDAR ,THALAPPILLY TALUK,
   THRISSUR-680 517.

3. THE REVENUE DIVISIONAL OFFICER,
   THRISSUR-680 517.

BY SMT.SOBHA ANNAMMA EAPEN, GOVERNMENT PLEADER

RESPONDENT(S)/PETITIONERS IN WPC:
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1. C.T.MARTHA,
   W/O.LATE PAVOOTY, 2-359, KUTHOOR HOUSE,
   AYYAPATH ROAD, CHOWANNUR-680 517, THALAPPILLY TALUK,
   THRISSUR.

2. K.P.DAVIS,
   S/O.LATE PAVOOTY, 2-359, KUTHOOR HOUSE,
   AYYAPATH ROAD, CHOWANNUR-680 517, THALAPPILLY TALUK,
   THRISSUR.

3. K.P.PRINCE,
   S/O.LATE PAVOOTY, 2-359, KUTHOOR HOUSE,
   AYYAPATH ROAD, CHOWANNUR-680 517, THALAPPILLY TALUK,
   THRISSUR.

R BY SMT.S.KARTHIKA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 07-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

WA.No. 2424 of 2015 ()

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A: COPY OF THE JUDGMENT DATED 6.8.2015 IN W.P.(C) 6481 OF 2014.

RESPONDENT'S EXHIBITS - NIL

//TRUE COPY//

P.A TO JUDGE

THOTTATHIL B.RADHAKRISHNAN &
ANU SIVARAMAN, JJ.

W.A.No.2424 of 2015

Dated this the 7th day of December, 2015

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1. Heard the learned Senior Government Pleader and the learned counsel for the appellant.

2. This writ appeal is against the judgment by which the learned single Judge interfered with the decision of the Government under Section 3(2) of the Kerala Building Tax Act, 1975, holding that the building belonging to the respondent, which is the subject matter of this litigation, is not a factory and, therefore, ineligible for exemption in terms of Section 3(1)(b) of that Act.

3. The crux of the issue is as to whether the learned single Judge was justified in interfering with the Government's decision

under Section 3(2) of the Kerala Building Tax Act and consequently holding that the building in question is exempted from the provisions of that Act on the ground that it is a factory being a book binding unit, since such units are brought within the purview of the Factories Act on the basis of notification issued under Section 85 of that Act.

4. Notifications under Section 85 of the Factories Act, 1948 can be brought to bring establishments under the cover of the Factories Act inasmuch as different provisions of the Factories Act can be made applicable to such establishments which would fall within the notifications under Section 85 of the Factories Act. The survey of the different notifications issued under Section 85 would show that the establishments which are covered by such notifications are brought under the cover of the Factories Act in such a way that they are brought to bear the consequences of the provisions of the Factories Act, except those which are excluded specifically by each such notification. Though it may not be that where the notifications under Section 85 would eo instanti amount to a deeming

provision or an incorporation by reference of the whole of the Factories Act to such an establishment, that is of no consequence even as regards establishments like book binding units. Question as to whether a particular establishment would be factory for the purpose of the Factories Act is a matter that would largely depend upon the requisite qualities or conditions to make an establishment a factory in terms of the provisions of the Factories Act. We say this pointedly because, the Government had come to the conclusion that the respondent was not maintaining a muster roll and did not have minimum ten workmen in its rolls.

5. But, we leave the afore-noted issue here because the larger point that now glares on the face of the order of the Government is that the person who sought exemption, i.e., Sri.Pavootty was given an opportunity of hearing on 15.7.2009 and on 11.10.2013. The Tahsildar had submitted a further report, the contents of which were taken by the Government to render the impugned Exhibit P5 decision on 2.1.2014. The spread of time between the date of hearing of

Sri.Pavootty and the final decision with the intervening report of the Tahsildar clearly shows the questions of facts which ought to have been deliberated upon and requested to be considered de novo by the Government. In the light of what is stated herein above, we may also notice that Sri.Pavootty is no more and his legal representatives are the writ petitioners.

6. For the aforesaid reasons, we are inclined to vacate the judgment impugned and also Exhibit P5 decision of the Government rendered on 2.1.2014 and direct that the Government shall take up the application of Sri.Pavootty for consideration de novo, after extending opportunity of hearing to the writ petitioners, who claim to be the legal representatives of Sri.Pavootty. Due process in accordance with law shall follow and a decision shall be taken without delay. Pending that, the status quo obtained as on today regarding collection of tax under the Kerala Building Tax Act will be maintained. The writ petitioners are directed to mark appearance in the office of the Secretary to Government or Deputy Secretary to Government in the Revenue Special Cell

Department so that they can be given an appropriate date of hearing and also the identity of the officer who will hear the writ petitioners on behalf of the appellant.

Writ appeal ordered accordingly.

Sd/-
(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

Sd/-
(ANU SIVARAMAN, JUDGE)

//TRUE COPY//

P.A TO JUDGE

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