IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 17TH DAY OF NOVEMBER 2015/26TH KARTHIKA, 1937

WA.No. 2436 of 2015 () IN WP(C).31729/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 31729/2015 of HIGH COURT OF KERALA DATED 19-10-2015

APPELLANT(S)/PETITIONER:

SUJA GEORGE AGED 44 YEARS
W/O.LATE P.K.GEORGE, PULIMOOTIL HOUSE, CHANTHAKADAVU
NEAR KERALA KOUMUDI, KOTTAYAM.

BY ADV. SRI.JAMES ABRAHAM (VILAYAKATTU)

RESPONDENT(S)/RESPONDENTS:
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1. THE TAHSILDAR, MUVATTUPUZHA TALUK
MINI CIVIL STATION, MUVATTUPUZHA-686669.

2. THE VILLAGE OFFICER
MARADY VILLAGE, MUVATTUPUZHA-686673.

BY GOVERNMENT PLEADER SMT.SHOBA ANNA EAPEN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 17-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.

W.A.No. 2436 of 2015

Dated this the 17th November, 2015

JUDGMENT

Thottathil B.Radhakrishnan, J.

We have heard learned counsel for the appellant.

2. One Baby Philip, going by Exhibit P7, constructed a structure with 11 apartments. When he was notified of assessment under the Kerala Building Tax Act, 1975, he took the stand that he had sold out the flats to different persons and the building should be assessed in the name of all those persons instead of being assessed as a single unit. He did not produce any evidence before the Tahsildar in that regard. It was also noticed by the Tahsildar that the property tax was paid for the entire building as one unit as was evidenced by the tax receipt issued by the Muvattupuzha Municipality on 5.12.2007 in the name of Baby Philip. The Tahsildar therefore concluded the proceedings under the Kerala Building Tax Act accordingly. A writ petition was filed

before this Court. That resulted in a direction to the Tahsildar to consider the assessment order afresh after hearing the necessary parties. Though the occupiers of the 11 apartments and Baby Philip were heard, there was nothing before the Tahsildar even then to show that the building did not come within the definition of Section 2(e) of the Kerala Building Tax Act. Under such circumstances, the Tahsildar concluded the assessment accordingly. When that was challenged before the learned single Judge, it was found that if at all the petitioner has a case, it was for her to prosecute in a statutory appeal.

3. Learned counsel for the appellant relied on a decision of the Apex Court reported in ***State of Kerala and others v. A.P.Mammikutty*** (2015(3) KHC 794 (SC)) and also pointed out that subsequently a circular has been issued by the Government which would indicate that when an apartment is sold, thereafter the assessment has to be on the basis of that individual holder. That relates to luxury tax under the Kerala Building Tax Act and not the assessment to

building tax under the Kerala Building Tax Act. This dichotomy has to be legally maintained because luxury tax is a liability that gets attracted year to year, while liability to building tax under the Kerala Building Tax Act is a single effect even and the incident of tax is the completion of the construction of the building and not the sale of the individual apartment.

4. Be that as it may, the learned single Judge having given an opportunity to the writ petitioner to prosecute the statutory appeal, if so advised, we think that we would leave the appellant to enjoy the benefit of the impugned judgment to the aforesaid extent, since we do not see any merit in this appeal.

In the result, the writ appeal is dismissed.

THOTTATHIL B.RADHAKRISHNAN
JUDGE

ANU SIVARAMAN
JUDGE

vgs17/11/15