IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 6TH DAY OF JANUARY 2015/16TH POUSHA, 1936

WP(C).No. 151 of 2015 (T)

PETITIONERS :
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1. MUHAMMADALI, AGED 44 YEARS,
   S/O KHADER, THEKKE THAMARACHALIL,
   VADAKODE KARA, VADAKODE P.O., ERNAKULAM DISTRICT.

2. KHADER, S/O HYDROSE,
   THEKKE THAMARACHALIL, VADAKODE KARA,
   VADAKODE P.O., ERNAKULAM DISTRICT.

3. HAWWAMMA, D/O KHADER,
   THEKKE THAMARACHALIL, VADAKODE KARA,
   VADAKODE P.O., ERNAKULAM DISTRICT.

4. KHADEEJA, D/O KHADER,
   THEKKE THAMARACHALIL, VADAKODE KARA,
   VADAKODE P.O., ERNAKULAM DISTRICT.
   [PETITIONERS 2 TO 4 ARE REPRESENTED BY THE IST
   PETITIONER WHO POWER OF ATTORNEY HOLDER VIDE EXHIBIT P1]

BY ADVS.SMT.K.M.RASHMI (PARAVOOR)
SRI.M.B.SUDARSANA KUMAR

RESPONDENTS :
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1. THE DISTRICT COLLECTOR, ERNAKULAM
   COLLECTORATE, CIVIL STATION, KAKKANAD-682025.

2. THE SPECIAL TAHSILDAR (L.A) NO.III
   KOCHI INTERNATIONAL AIRPORT, NEDUMBASSERY,
   NAYATHODE P.O., ERNAKULAM DISTRICT-683108.

3. THE COMMISSIONER OF INCOME TAX (TDS)
   OFFICE OF THE COMMISSIONER OF INCOME TAX, KOCHI
   C.R. BUILDINGS, I.S.PRESS ROAD, KOCHI-682018.

R1 BY SENIOR GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN
R2 & R3 BY SRI.JOSE JOSEPH, SC, FOR INCOME TAX

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06-01-2015 ALONG WITH WPC 191/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

WP(C).No. 151 of 2015 (T)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE COPY OF THE POWER OF ATTORNEY DATED 17.12.2013.

EXHIBIT P2: TRUE COPY OF POSSESSION CERTIFICATE DATED 17.12.2014.

EXHIBIT P3: G.O.(RT)NO.1479/2014/PWD DATED 23.10.2014.

EXHIBIT P4: NOTICE IN LAC NO.27/2014 DATED 16.12.2014.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE

bp

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.151 OF 2015 (T)
&
W.P.(C).NO.191 OF 2015 (Y)

Dated this the 6th day of January, 2015

<u>J U D G M E N T</u>

It is submitted by counsel for the parties that the issue involved in these writ petitions is squarely covered by the judgment of this Court in W.P.(C).No.5607/2014 and connected cases, which reads as under:

> "The issue raised in all these writ petitions are with respect to the acquisition for highway or irrigation purposes and the tax deduction at source, from the award amounts, as mandated under Section 194 LA of the Income Tax Act, 1961. The contention of the petitioners is that they have under sub-section(2) of Section 11 entered into negotiated sale agreements with the District Level Purchase Committee, constituted by the Government and subsequently an award was passed under sub-section(2) of Section 11, taking it out of the net of a compulsory acquisition. The petitioners rely on a Division Bench judgment of this Court, which reliance was distinguished by the learned Standing Counsel for Government of India (Taxes), on the ground that the facts clearly distinguish the two acquisitions and the present acquisition is initiated under the Land Acquisition Act, 1894 and an award is also passed under the L A Act.
>
> The issue with respect to an award passed under sub-section(2) of Section 11 has been considered by this Court in the judgment delivered in a batch of writ petitions W.P(C)No.4209 of 2014 and connected cases.

> The same principle would apply herein also. The very same declaration passed in the earlier case would apply squarely to the petitioners also. The revenue authorities are hence restrained from making any tax deduction at source as provided under 194 LA but however, with liberty to make such deduction under Section 194 IA, wherever it is permissible.
>
> Writ petitions are allowed. Parties to bear their costs."

Accordingly, these writ petitions are also allowed in the light of the above judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp