IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

WP(C).No. 500 of 2015 (J)

PETITIONER(S):
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1. N.B.SIVASUBRAMANIAN,
   S/O. N.S. BALAKRISHNAN, AISWARYA,
   NELLISSERY GRAMAM, PALAKKAD DISTRICT.

2. N.B. KRISHNAN,
   S/O. N.S. BALAKRISHNAN, AISWARYA,
   NELLISSERY GRAMAM, PALAKKAD DISTRICT.

   BY ADVS.SRI.U.BALAGANGADHARAN,
   SRI.S.M.UNNIKRISHNAN.

RESPONDENT(S):
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1. THE TAHSILDAR,
   PALAKKAD-678 001.

2. THE VILLAGE OFFICER,
   PALAKKAD I VILLAGE, PALAKKAD-678 001.

3. THE REVENUE DIVISIONAL OFFICER,
   PALAKKAD-678 001.

4. THE DISTRICT COLLECTOR,
   PALAKKAD.

BY GOVT. PLEADER SMT.SHOBA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 500 of 2015 (J)

APPENDIX

PETITIONER'S EXHIBITS:-

P1. TRUE COPY OF THE PARTITION DEED NO. 1090 DATED 18-05-1998 OF SRO, PALAKKAD.

P2. TRUE COPY OF BUILDING PERMIT DATED 12-08-1998 ISSUED BY PALAKKAD MUNICIPALITY.

P3. TRUE COPY OF OWNERSHIP CERTIFICATE DATED 05-05-2000 ISSUED BY PALAKKAD MUNICIPALITY TO THE FIRST PETITIONER.

P4. TRUE COPY OF OWNERSHIP CERTIFICATE DATED 05-05-2000 ISSUED BY PALAKKAD MUNICIPALITY TO THE SECOND PETITIONER.

P5. TRUE COPY OF PROPERTY TAX RECEIPT DATED 30-05-2013 ISSUED BY PALAKKAD MUNICIPALITY TO FIRST PETITIONER.

P6. TRUE COPY OF PROPERTY TAX RECEIPT DATED 30-05-2013 ISSUED BY PALAKKAD MUNICIPALITY TO SECOND PETITIONER.

P7. TRUE COPY OF BUILDING TAX DEMAND NOTICE DATED 27-06-2002 ISSUED BY TAHSILDAR PALAKKAD.

P8. TRUE COPY OF LUXURY TAX ASSESSMENT ORDER DATED 05-10-2005 ISSUED BY TAHSILDAR, PALAKKAD.

P9. TRUE COPY OF RECEIPT DATED 02-11-2005 ISSUED BY VILLAGE OFFICER PALAKKAD NO. 1 VILLAGE.

P10. TRUE COPY OF RECEIPT DATED 27-03-2013 ISSUED BY VILLAGE OFFICER, PALAKKAD NO.1 VILLAGE.

P11. TRUE COPY OF RECEIPT DATED 17-03-2014 ISSUED BY VILLAGE OFFICER, PALAKKAD NO. I VILLAGE.

P12. TRUE COPY OF COMMUNICATION DATED 20-08-2014 ISSUED BY DISTRICT COLLECTOR, PALAKKAD.

P13. TRUE COPY OF THE PETITION FILED BY THE PETITIONER DATED 04-11-2014 TO FIRST RESPONDENT.

P14. TRUE COPY OF JUDGMENT OF THIS HON'BLE COURT IN JESSY MATHEW V. DISTRICT COLLECTOR 2013 (3) KLT 246.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.500 OF 2015

Dated this the 7th day of January, 2015

J U D G M E N T

The petitioners owned different portions in a building which was constructed subsequent to 1999. It is the case of the petitioners that, although the separate portions occupied by them are under different ownership, and have been assigned separate building numbers, and property tax is also levied and collected separately, for the purposes of luxury tax, the entire building has been treated as a single unit and the levy of luxury tax in terms of Section 5A of the Kerala Building Tax Act made accordingly. The grievance of the petitioners in the writ petition is that, in view of the stand of the respondents, in treating the building as a single unit, the petitioners are being forced to pay luxury tax in respect of the portion of the building under their respective ownership, despite the fact that the plinth area of such portion is less than the plinth area specified under Section 5A of the Building Tax Act for attracting the levy of luxury tax. Insofar as the petitioners have already paid the luxury tax for the assessment years up to 2013-2014, the prayer of the petitioners in the writ petition is only for a direction to the 1st respondent to consider and pass orders on

Ext.P13 representation, that has been preferred by them before him, seeking a clarification as to the levy of luxury tax under Section 5A of the Building Tax Act and the plinth area that would be taken into account for the purposes of determining whether or not the levy of luxury tax would be attracted to the petitioners. This request is made in order to ensure that, in future years, the levy of luxury tax on the petitioners would be made in accordance with the provisions of the Act.

2. I have heard Sri.U.Balagangadharan, the learned counsel for the petitioners and the learned Government Pleader appearing on behalf of the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I dispose the writ petition with a direction to the 1st respondent to consider and pass orders on Ext.P13 representation preferred by the petitioners before him. The 1st respondent shall, in particular, consider the issue of whether the petitioners would be liable to pay luxury tax in respect of those portions of the building under their respective ownerships, especially when, in terms of Section 5A of the Building Tax Act, the levy of luxury tax is attracted only to residential

buildings having a plinth area of 278.7 sq.metres or more. The 1st respondent shall keep in mind the fact that the term residential building is defined under Section 2(l) of the Building Tax Act as meaning a building built exclusively for residential purposes and including "a part thereof". The 1st respondent shall pass orders as directed, after hearing the petitioner, within a period of three months from the date of receipt of a copy of this judgment. It is made clear that future assessments of the petitioners to luxury tax will be based on the orders to be passed by the 1st respondent as directed in this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/