IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 9TH DAY OF JULY 2015/18TH ASHADHA, 1937

WP(C).No. 4802 of 2009 (V)

PETITIONER(S):

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1. P.M. UNNIKRISHNAN,
   "KRISHNA PRIYA", RAGAMALIKPURAM, KOTTAPPURAM,
   PUTHOLE, THRISSUR DISTRICT, REPRESENTED BY HIS POWER OF
   ATTORNEY HOLDER SMT. REETHA UNNIKRISHNAN,
   W/O.P.M. UNNIKRISHNAN, RESIDING AT 'KRISHNA PRIYA',
   RAGAMALIKPURAM, KOTTAPPURAM,PUTHOLE, THRISSUR.

2. P.M. SANKARANKUTTY, "KRISHNA PRIYA",
   RAGAMALIKPURAM, KOTTAPPURAM, PUTHOLE,
   THRISSUR DISTRICT, REPRESENTED BY HIS POWER OF ATTORNEY
   HOLDER SMT. REETHA UNNIKRISHNAN, W/O.P.M. UNNIKRISHNAN,
   RESIDING AT 'KRISHNA PRIYA', RAGAMALIKPURAM, KOTTAPPURAM,
   PUTHOLE, THRISSUR.

   BY ADV. SRI.P.GOPINATH

RESPONDENT(S):

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1. STATE OF KERALA,
   REPRESENTED BY THE SECRETARY TO GOVERNMENT (TAXES),
   SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR, THRISSUR.

3. THE TAHSILDAR, THRISSUR.

4. THE VILLAGE OFFICER, THRISSUR.

   BY GOVERNMENT PLEADER SRI.R.RANJITH

   THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
   ON 09-07-2015, THE COURT ON THE SAME DAY DELIVERED
   THE FOLLOWING:

sts

WP(C).NO.4802/2009

APPENDIX

PETITIONER'S EXHIBITS:

P1 COPY OF THE DOCUMENT NO.7778/1/2005 OF SRO, THRISSUR DATED 1/12/2005.

P2 COPY OF THE NOTICE DATED 14/07/2008

P3 COPY OF THE RETURN SUBMITTED BY THE PETITIONERS DATED 2/08/2007

P4 COPY OF THE ORDER OF ASSESSMENT DATED 23/01/2009 ISSUED BY THE 3RD RESPONDENT

P5 COPY OF THE CONSTRUCTION AGREEMENT EXECUTED BETWEEN ONE MANOJ RADHAKRISHNAN AND M/S. SRU ASSOCIATES REGARDING CONSTRUCTION OF AN APARTMENT FOR MR.MANOJ RADHAKRISHNAN IN THE PREMISES IN QUESTION

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.MUHAMED MUSTAQUE, J.

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W.P.(C).No.4802/2009

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Dated this the 9th Day of July, 2015

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

The petitioners have approached this Court challenging assessment of building tax. The case of the petitioners is that different apartments constructed in the land have been assessed to building tax as a single unit. According to them, in terms of explanation 2 to Section 2(e) of the Kerala Building Tax Act 1975, where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building. It appears that the petitioners have submitted a return showing that the building consists of 21 apartments belonging to 21 persons. It was submitted on 02/08/2007 as seen from

Ext.P3. The demand now made in Ext.P4 assessment order dated 23/01/2009 is Rs.5,46,750/-.

2. In the counter affidavit it is stated that the party had not filed return in Form II. It is further stated that hearing notice was sent to the petitioners with a direction to produce Approved Plan, Occupancy Certificate etc. and one Ravindran.V.A. attended hearing on behalf of the party and he sought 15 days time to produce the documents.

3. It is apparent that the proceedings have been concluded in the absence of any documents on the side of the petitioners. Even in the absence of production of the documents, it is incumbent on the part of the Tahsildar while assessing, to pass a reasoned order after adverting to the nature of the building.

4. However, it is submitted by the learned counsel for the petitioners that the demand now raised in Form V is without any adjudication of the issues.

5. Taking note of the facts and circumstances, I am of the view that the petitioners should be given an

opportunity to raise their objections, especially, when the petitioners submit that they have already filed a return as per Ext.P5 and the Assessing Authority has to pass a fresh reasoned order.

6. Therefore, the following directions are issued:

The petitioners shall appear before the Assessing Authority on 07/08/2015 at 11 a.m. and place all materials including the supporting documents to show that the building has been constructed by the fund provided by 21 persons separately. The petitioners shall also make available all other documents to substantiate their claim. Based on the above, the Assessing Authority shall pass a fresh reasoned order. The entire proceedings shall be concluded within a period of one month from 07/08/2015.

The writ petition is disposed of as above. No costs.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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