IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 25TH DAY OF JUNE 2015/4TH ASHADHA, 1937

WP(C).No. 2072 of 2015 (H)

PETITIONER :

M/S. CHALAKUDY HOTELS (P) LTD.,
NEAR MUNICIPAL JUNCTION, KIZHAKKE CHALAKUDY VILLAGE,
MUKUNDAPURAM, CHALAKUDY, THRISSUR
REPRESENTED BY ITS MANAGING DIRECTOR,
SRI.VARGHESE P.Y., I.A., D.D.PLATINUM PLANET,
KARTHIKADAVU, KOCHI - 17.

BY ADV. SRI.T.K.ANANDA KRISHNAN

RESPONDENTS :
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1. **THE SECRETARY TO GOVERNMENT,**
   REVENUE DEPARTMENT, SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE REVENUE DIVISIONAL OFFICER,**
   THRISSUR.

3. **THE TAHSILDAR,**
   MUKUNDAPURAM TALUK, THRISSUR.

BY GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

sts

WP(C).No. 2072 of 2015 (H)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1:	TRUE COPY OF THE ASSESSMENT ORDER ISSUED TO THE PETITIONER.
EXT.P2:	TRUE COPY OF THE DEMAND NOTICE DATED 31/08/2010 ISSUED TO THE PETITIONER.
EXT.P3:	TRUE COPY OF THE TAX RECEIPT DATED 22/09/2010.
EXT.P4:	TRUE COPY OF THE APPEAL MEMORANDUM SUBMITTED TO THE 2ND RESPONDENT.
EXT.P5:	TRUE COPY OF THE ORDER NO. 15514/2009 DATED 24/08/2011 OF THE 2ND RESPONDENT REVENUE DIVISIONAL OFFICER, THRISSUR.
EXT.P6:	TRUE COPY OF THE NOTICE SEND BY THE 3RD RESPONDENT FOR LOCAL INSPECTION DATED 17/09/2011.
EXT.P7:	TRUE COPY OF THE ORDER DATED 31/10/2011 OF THE 3RD RESPONDENT.
EXT.P8:	TRUE COPY OF THE ORDER BY 3RD RESPONDENT STATING PAYMNENT SCHEDULE DATED 14/11/2011.
EXT.P9:	TRUE COPY OF THE APPEAL FILED BEFORE THE 2ND RESPONDENT DATED 22/11/2011.
EXT.P10:	TRUE COPY OF THE ORDER DATED 13/01/2012 OF THE 3RD RESPONDENT.
EXT.P11:	TRUE COPY OF THE JUDGMENT IN WPC. NO. 3833/2012 OF THIS HON'BLE COURT.
EXT.P12:	TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT.
EXT.P13:	TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT.
EXT.P14:	TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WPC.NO. 16490/2013.
EXT.P15:	TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED 11/11/2014.
EXT.P16:	TRUE COPY OF THE RECEIPT SHOWING PART PAYMENT OF EXT.P15 DEMAND NOTICE.
EXT.P17:	TRUE COPY OF THE PLAN OF THE BUILDING.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

sts P.A.TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.2072 of 2015

Dated this the 25th day of June, 2015

J U D G M E N T

The petitioner challenges the order passed by the Tahsildar, Chalakkudy for the assessment of building tax.

2. The petitioner has already approached this Court on two occasions challenging the assessment of building tax. Essentially, issue in all occasions is the assessment of plinth area. In the last judgment, produced as Ext.P14, this Court ordered that, physical inspection shall be conducted to find out whether truss work on the terrace is being used for weather protection or not. This Court relied on the decision in ***State of Kerala v. Southern Fisheries Corporation [2011 (1) KLT 956]*** to held that, if the truss work is being carried out for weather protection and if it is not enclosed on its sides, necessarily that has to be excluded from the plinth area.

3. Pursuant to the direction of this Court, Ext.P15 order has been passed. The Tahsildar has conducted an inspection and found out that, only 935.04 sq.meter alone can be exempted taking into the fact that, that being used as weather proof. However it is noted in the same order that, the truss work in the lower floor is using and therefore it cannot be excluded from the calculation of plinth area.

4. The learned counsel for the petitioner submits that, there is no yardstick followed by the Tahsildar to reckon the truss work in the lower floor area. It is further submitted that, the truss work in

the lower floor area also being used as weather proof.

5. Considering the facts and circumstances, I am of the view that, essentially the disputed question of fact raised by the petitioner is regarding the nature of the use of lower floor. It is a matter to be decided after verifying the necessary report and evidence of the Tahsildar. In such circumstances, the petitioner shall invoke an alternate remedy.

In the light of facts and circumstances before this Court, I am not inclined to entertain this writ petition. Accordingly the same is disposed of. If the petitioner files an appeal within three weeks from today, the RDO shall consider the same, provided the petitioner complies with other conditions for remittance of Building Tax. Any payment already effected shall be given credit.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE.

AV