IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 22ND DAY OF JANUARY 2015/2ND MAGHA, 1936

WP(C).NO. 2359 OF 2015 (T)

PETITIONER(S):

ABUBUCKER PULIYANKANDIYIL,AGED 45 YEARS
S/O.KUNHABDULLA HAJI
POST IYYAMKODE
VATAKARA TALUK
KOZHIKODE DISTRICT
KERALA STATE - 673 504

BY ADVS.SRI.B.KRISHNAN
SRI.R.PARTHASARATHY

RESPONDENT(S):

1. THE TAHSILDAR, VATAKARA
ASSESSING AUTHORITY
KERALA BUILDING TAX ACT 1975-
OFFICE OF THE TAHSILDAR
VATAKARA- 673101

2. STATE OF KERALA
REPRESENTED BY THE SECRETARY (REVENUE)
THIRUVANANTHAPURAM - 695001

BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).NO. 2359 OF 2015 (T)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE PROCEEDINGS OF THE FIRST RESPONDENT DATED 18.01.2014

EXT.P2: TRUE COPY OF THE RECEIPT FOR PAYMENT OF LUXURY TAX FOR 2010-11 DATED 19.01.2012

EXT.P3: TRUE COPY OF THE PLAN APPROVED BY NADAPURAM GRAMA PANCHAYAT

EXT.P4: TRUE COPY OF THE REPRESENTATI0N BY THE PETITIONER TO THE FIRST RESPONDENT DATED 22ND MARCH 2014

EXT.P5: TRUE COPY OF THE PASSPORT WITH ENDORSEMENT OF VISA OF THE PETITIONER

EXT.P6: TRUE COPY OF THE PROCEEDINGS OF THE 1ST RESPONDENT DATED 11.09.2014

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P A TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.2359 OF 2015

Dated this the 22nd day of January, 2015

J U D G M E N T

The grievance of the petitioner in the writ petition is against the inaction on the part of the 1st respondent to conduct a measurement of the building owned by the petitioner, for the purposes of determining the plinth area of the building in connection with the levy of luxury tax under the Kerala Building Tax Act. It is the case of the petitioner that, although he has been assessed to luxury tax in the past, and he has been paying luxury tax for most of the years for which he was assessed, it is incumbent upon the 1st respondent, when so requested, to conduct a fresh measurement of the plinth area of the building, so as to determine whether, for any particular assessment year, the building in question has the requisite plinth area to attract the levy of luxury tax under Section 5A of the Building Tax Act. The petitioner contends that although he had made a request to the 1st respondent, the 1st respondent has refused to conduct a measurement as sought for by the petitioner.

2. I have heard Sri.B.Krishnan, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned

Government Pleader for respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I am of the view that when an assessee to luxury tax under the Kerala Building Tax Act, makes a request to the assessing authority for the determination of the plinth area of the building which is subject to assessment, then it becomes incumbent upon the 1st respondent to conduct a measurement as sought for by the assessee, since the levy of luxury tax under section 5A is only on buildings that exceed a certain plinth area, and the levy of tax can be attracted only if it is shown that the plinth area of the building in question exceeds the limit prescribed in the said Section. Thus, the determination of the plinth area of the building, prior to the levy of luxury tax thereon, is a duty cast upon the assessing authority before levying a tax on the assessee. Accordingly, I direct that if the petitioner prefers a representation before the 1st respondent for a measurement of the plinth area of the building in question, then the 1st respondent shall conduct a measurement as required by the petitioner, after notice to the petitioner, and intimate the petitioner of his findings pursuant to the said measurement. The levy of luxury tax in terms of Section 5A of the Kerala Building Tax Act shall be done only

based on the determination, by the 1st respondent, of the plinth area of the building. I make it clear that the directions in this judgment shall apply only in respect of future years and shall not in any way affect the luxury tax assessments already completed on the petitioner for the past period.

The Writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns