IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 3270 of 2015 (G)

PETITIONER(S):

K.C.BABUKUTTY, AGED 52 YEARS
S/O.UTHUP CHANDY, KANNAMTHURUTHI HOUSE, PARIYARAM P.O.
THOTTACKADU, KOTTAYAM DISTRICT.

BY ADVS.SRI.JAMES KURIAN
SRI.SANTHOSH MODAYIL

RESPONDENT(S):
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1. **DISTRICT COLLECTOR**
   COLLECTORATE P.O., KOTTAYAM - 686 002.

2. **REVENUE DIVISIONAL OFFICER,**
   COLLECTORATE P.O., KOTTAYAM - 686 002.

3. **THE TAHSILDAR,**
   TALUK OFFICE, CHANGANASSERY. 686 101.

BY GOVERNMENT PLEADER SRI.BOBY JOHN PULICKAPARAMBIL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PJ

WP(C).No. 3270 of 2015 (G)

APPENDIX

PETITIONER(S)' EXHIBITS

P1- **TRUE COPY OF THE OCCUPANCY CERTIFICATE ISSUED BY THE SECRETARY, GRAMA PANCHAYAT VAKATHANAM**

P2- **TRUE COPY OF THE ORDER OF ASSESSMENT NO. E8- 6086/06 DATED 31.8.2006 ISSUED BY THE 3RD RESPONDENT**

P3- **TRUE COPY OF THE DEMAND NOTICE UNDER SECTION 5A OF BUILDING TAX ACT DATED 31.8.2006 ISSUED BY THE 3RD RESPONDENT**

P4- **TRUE COPY OF THE RECEIPT DATED 13.9.2006 FOR RS. 17,400/- ISSUED BY THE VILLAGE OFFICER, VAKATHANAM**

P4(A) - TRUE COPY OF THE RECEIPT DATED 13.9.2006 FOR RS. 2000/- ISSUED BY THE VILLAGE OFFICER, VAKATHANAM

P5- **TRUE COPY OF THE REPORT OF THE DEPUTY TAHSILDAR CHANGANASSERY DATED 18.7.2009**

P6- **TRUE COPY OF THE ORDER IN APPEAL NO. D 3234/08 K.DIS DATED 28.6.2010 PASSED BY THE 2ND RESPONDENT**

P7- **TRUE COPY OF THE ORDER IN REVISION B10(1) - 2010/51809/5 DATED 21.10.2013 PASSED BY THE 1ST RESPONDENT**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.K.JAYASANKARAN NAMBIAR, J.

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W.P.(C). No. 3270 of 2015

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Dated this the 1st day of April, 2015

JUDGMENT

The petitioner is aggrieved by the demand of Luxury tax on a building that was constructed by him during the assessment year 2002-03. The specific case of the petitioner in the writ petition is that, while in the assessment to building tax, as also the earlier assessements to luxury tax, the plinth area of the building was taken as 355.26 Sq.Mtrs, the actual fact is that the building has a plinth area of only 267.41 Sq.Mtrs., which is evidenced by Ext.P5 report that was submitted by the Deputy Tahsildar. The facts in the writ petition would disclose that, pursuant to Ext.P5 report, that was obtained by the petitioner, the petitioner preferred appeals against the earlier assessments done on him before the 1st appellate authority. The said appeals were, however, rejected on the ground that the appeals filed by the petitioner were belated and could not be considered on merits by the appellate authority. It is under these circumstances, that the petitioner has approached this Court with the present writ petition, seeking reliefs against the stand taken by the respondents.

2. I have heard the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for

the respondents.

3. On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that the challenge of the petitioner to the levy of luxury tax in respect of his building holds merit. The levy of luxury tax is a yearly levy, and the mere fact that there have been assessments completed against the petitioner for the past periods, does not mean that the petitioner cannot question the levy of luxury tax in a subsequent year, when it is demonstrated that the factual situation is such, as would not attract the levy of luxury tax to the building in question. In the case of the petitioner, he relies on Ext.P5 report submitted by the Deputy Tahsildar, which would indicate that the plinth area of the building, is only 267.41 Sq.Mtrs. If that be the case, then it is apparent that that building in question will not attract the levy of luxury tax inasmuch as luxury tax is attracted only in respect of those buildings where the plinth area is more than 278 Sq.Mtrs. Taking note of the report relied upon by the petitioner, I dispose the writ petition with the following directions:

(i) In respect of the assessment year 2014-15, if the petitioner files a representation before the 3rd respondent within three weeks from today, accompanied by the detailed plan relating to the building and a copy of Ext.P5 report of the Deputy Tahsildar, then the 3rd respondent shall consider the case of the petitioner on merits and take a decision on the issue of whether the building of the petitioner will attract the levy of luxury tax.

(ii) The 3rd respondent shall pass orders on the representation to be filed by the petitioner within a period of two months from the date of receipt of a copy this judgment, after hearing the petitioner.

(iii) To enable the 3rd respondent to do so, I direct the petitioner to appear before the 3rd respondent at his office at 11 AM on 04.05.2015.

sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das