IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WP(C).No. 3375 of 2015 (V)

PETITIONER(S):

MARY PAUL AGED 69 YEARS
W/O.PAUL CHACKO, KALLANICKAL HOUSE
KEERAMPARA P.O. KOTHAMANGALAM, ERNAKULAM DISTRICT

BY ADV. SRI.SAJEEV KUMAR K.GOPAL

RESPONDENT(S):
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1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
REVENUE DEPARTMENT, GOVERNMENT SECRETARIAT
THIRUVANANTHAPURAM 695001.

2. THE DISTRICT COLLECTOR, ERNAKULAM
CIVIL STATION, KAKKANAD - 682 030

3. THE TAHSILDAR
KOTHAMANGALAM, ERNAKULAM DISTRICT, PIN-686 691

4. THE VILLAGE OFFICER
OFFICE OF THE VILLAGE OFFICER, KEERAMPARA, PIN-686691

BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3375 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1 TRUE COPY OF THE ASSESSMENT ORDER ISSUED BY THE 3RD RESPONDENT DATED 27-03-2002

EXT.P2 - TRUE COPY OF THE COMMUNICATION FROM THE 2ND RESPONDENT TO THE 1ST RESPONDENT DATED 13-02-2013

EXT.P3 - TRUE COPY OF THE REPLY FROM THE 1ST RESPONDENT TO THE 2ND RESPONDENT DATED 02-03-2013

EXT.P4 - TRUE COPY OF THE COMMUNICATION TO THE DECEASED HUSBAND OF THE PETITIONER DATED 27-03-2013

EXT.P5 - TRUE COPY OF THE PROCEEDINGS OF THE 3RD RESPONDENT DATED 06-06-2007

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A. TO JUDGE

JJJ

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.3375 OF 2015 (V)

Dated this the 25th day of February, 2015

J U D G M E N T

The petitioner is aggrived by Exts.P3 and P4 orders that have been passed by the 1st and 2nd respondents respectively, in a matter involving levy of luxury tax under section 5A of Kerala Building Tax Act.

2. It is the case of the petitioner that challenging levy of luxury tax in respect of the building constructed by the petitioner, she had preferred a representation before the 2nd respondent contending that, while levying luxury tax, the assessing authority had taken into account the plinth area in respect of the car porch also, and this was not permissible in accordance with the provisions of the Building Tax Act and Rules. It would appear that the 2nd respondent sought for a clarification from the 1st respondent, and the 1st respondent by Ext.P3 communication informed the 2nd respondent that the circular issued by the Government, dated 21.03.2006 and clarifying that the area occupied by the car porch would not be taken into consideration for determining the plinth area for the purpose of levy of building tax, would not apply to buildings that were constructed prior to the date of

the circular, and to assessments completed in respect of the said buildings. On the basis of Ext.P3 clarification, the 2nd respondent proceeded to reject the representation of the petitioner, claiming exemption in respect of the area occupied by the car porch. Ext.P3 communication of the 1st respondent, and Ext.P4 order of the District Collector, are impugned in the writ petition.

3. I have heard Sri.Sajeev Kumar, the learned counsel appearing on behalf of the petitioner and Sri.Sudheesh Kumar, the learned Government Pleader appearing on behalf of the respondents.

4. On a consideration of the facts and circumstances of the case and the submissions made across the Bar, I find that the issue regarding the exclusion of the area occupied by the car porch, for the purposes of determining the plinth area of a building, for levy of luxury tax under section 5A of the Kerala Building Tax Act, is no longer res integra. By the decision of this Court in **Subhashchandrababu v. State of Kerala - 2006(2) KLT 189**, it has been clarified that the said area cannot be taken into account for the purpose of determining the plinth area in connection with the levy of luxury tax. In that view of the matter, I find that Ext.P3

communication and Ext.P4 order of the 2nd respondent cannot be legally sustained.

5. Resultantly, I quash Exts.P3 and P4 orders and direct the 2nd respondent to pass fresh orders on the representation submitted by the petitioner, taking note of the decision referred to above. Future luxury tax assessments of the petitioner shall be completed only in accordance with the orders to be passed by the 2nd respondent, pursuant to the directions in this judgment.

Writ petition is disposed as above.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

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