IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 3892 of 2014 (J)

PETITIONER(S):

MUHAMMED YASIR V.P., AGED 38 YEARS
S/O.CHERIA YOOSUF MASTER, VALIYAPEEDIAKKAL HOUSE
P.O.ARAKKUPARAMBA, (VIA), PERINTHALMANNA
MALAPPURAM DISTRICT, PIN 679 322

BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.N.DEEPA
SMT.VANDANA MENON

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
   MALAPPURAM 679 322

2. REVENUE DIVISIONAL OFFICER,PERINTHALMANNA,
   MALAPPURAM DISTRICT 679 322

3. THE TAHSILDAR,
   PERINTHALMANNA, MALAPPURAM DISTRICT 679 322

4. STATE OF KERALA
   REPRESENTED BY THE PRINCIPAL SECRETARY TO REVENUE DEPARTMENT
   GOVERNMENT OF KERALA, THIRUVANANTHAPURAM 695 001

BY ADV. GOVERNMENT PLEADER SMT.SHOBA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 3892 of 2014 (J)

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: TRUE COPY OF THE DOCUMENT NO 2651/2005 DT 25-05-2005 SRO MELATOOR

EXHIBIT P2: TRUE COPY OF THE NOTICE DATED 11-07-2005 ISSUED BY THE 3RD RESPONDENT

EXHIBIT P3: TRUE COPY OF THE ASSESSMENT ORDER PASSED BY THE 3RD RESPONDENT DATED 15-12-2005

EXHIBIT P4: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DT 21-04-2007 DISMISSING THE APPEAL FILED BY THE PETITIONER.

EXHIBIT P5: TRUE COPY OF JUDGMENT DT 2-3-2009 IN W.A NO 249/2008 OF THIS HON'BLE COURT

EXHIBIT P6: TRUE COPY OF AP[PLICATION SUBMITTED BY PETITIONER BEFORE 4TH RESPONDENT DT 16-10-2009

EXHIBIT P7: TRUE COPY OF ORDER OF 4TH RESPONDENT DATED 1-10-2013 BEARING NO 5304/13/REV.

EXHIBIT P8: TRUE COPY OF NOTICE DT 10-01-2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER

EXHIBIT P9 : TRUE COPY OF BUILDING TAX RECIEPT FOR TP 9/380 ISSUED BY THAZHEKKAD PANCHAYATH TO CHERIYA YOOSUF MASTER.

EXHIBIT P9(a): TRUE COPY OF BUILDING TAX RECEIPT FOR TP 9/380A ISSUED BY THAZHEKKAD PANCHAYATH TO MUHAMMED YASIR V.P.

EXHIBIT P9(b): TRUE COPY OF BUILDING TAX RECEIPT FOR TP 9/380B ISSUED BY THAZHEKKAD PANCHAYATH TO SIMIYA & IFIRIYA.

EXHIBIT P9(c): TRUE COPY OF BUILDING TAX RECEIPT FOR TP 9/380C ISSUED BY THAZHEKKAD PANCHAYATH TO ASIF.

EXHIBIT P10 : TRUE COPY OF RATION CARD ISSUED BY TALUK SUPPLY OFFICER, PERINTHALMANNA TO THE PETITIONER DT:24.12.2008.

EXHIBIT P10(a): TRUE COPY OF RATION CARD ISSUED BY TALUK SUPPLY OFFICER, PERINTHALMANNA TO PETITIONER'S FATHER DT.13.04.2010

EXHIBIT P10(b): TRUE COPY OF RATION CARD ISSUED BY TALUK SUPPLY OFFICER, PERINTHALMANNA TO PETITIONER'S BROTHER DT:04.12.2010

RESPONDENT(S)' EXHIBITS : NIL

// TRUE COPY //

P.A. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.3892 of 2014

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Dated this the 5th day of August, 2015

JUDGMENT

The petitioner impugns Ext.P7 order issued by the 4th respondent herein. The petitioner's father, namely Cheriya Yusuf Master had constructed a building in the year 1984. The building has been partitioned as separate unit and father had executed conveyance in favour of his four children by sale deeds. The Panchayath also assigned different door numbers to the said buildings. The petitioner's case is that, each of the buildings got independent identity, legally and functionally. Therefore, it is submitted that for the purpose of luxury tax, each building has to be taken separately and not the entire buildings as one unit.

2. The luxury tax being a recurring liability, even a subsequent partition can be taken into account to exclude from the liability. Therefore, based on the Ext.P1, it has

to be found out, whether each unit would hold within the ambit of Sec.5A of the Kerala Building Tax Act, as a separate unit.

3. The learned Government Pleader for the respondents firmly opposed and submits that, functionally all buildings are integrated and functions as one unit. Therefore, unless they get separated by identity, user and function, each of the units cannot be separately assessed for the purpose of luxury tax. It is also submitted that the petitioner prevented the officer from conducting an inspection of the building.

4. This Court is of the view that, if each building has got separate identity, legally and functionally, it has to be assessed separately. However this has to be verified by the Tahsildar by conducting an inspection of each unit. Therefore, the following directions are issued:

a) The Tahsildar is directed to conduct an inspection of the building covered by Ext.P1 sale deed and find out whether it has the functional independence as well as the legal separation. If it is found that it has got a separate identity, legally and functionally, necessarily, the building shall be assessed separately from the date of Ext.P1.

b) The petitioner shall appear before the 3rd respondent on 02.09.2015 at 11am.

c) The petitioner shall make available all the relevant materials before the Tahsildar for conducting site inspection.

d) The Tahsildar shall after conducting site inspection, hearing the petitioner and recording the same, take a decision within an outer limit of two months thereof.

In view of the above, the impugned order is set aside.

Sd/-
A.MUHAMED MUSTAQUE
JUDGE

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