IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

WP(C).No. 4170 of 2015 (U)

PETITIONER(S):

M/S. SOUTHERN INVESTMENTS PVT. LTD.,
HHYS BUILDING, 1ST FLOOR, RAJAJI ROAD
KOCHI-682018, REP. BY ITS DIRECTOR OPERATIONS,
JACOB CHANDY.

BY ADVS.SRI.BECHU KURIAN THOMAS
SRI.PAUL JACOB (P)
SRI.ENOCH DAVID SIMON JOEL
SRI.S.SREEDEV
SRI.RONY JOSE
SRI.GEORGE A.CHERIAN.

RESPONDENT(S):

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1. STATE OF KERALA,
   REP. BY THE SECRETARY, DEPT. OF REVENUE,
   SECRETARIAT,
   THIRUVANANTHAPURAM-695 001.

2. THE DISTRICT COLLECTOR,
   KOZHIKODE-673 001.

3. THE TAHSILDAR,
   KOZHIKODE TALUK, KOZHIKODE-673 001.

BY SENIOR GOVERNMENT PLEADER SMT. SHOBA ANNAMMA EAPEN.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT P1 : TRUE COPY OF ONE OF THE CONSTRUCTION AGREEMENTS ENTERED INTO BETWEEN THE PETITIONER AND AN APARTMENT OWNER DATED 14-11-2005.

EXT P2 : TRUE COPY OF THE NOTICE DATED 23-01-2010 ISSUED TO THE OWNERS ASSOCIATION OF 'HAMPTON MANOR'.

EXT P2(A) : TRUE COPY OF THE REPLY DATED 22-06-2011 FILED BY THE OWNERS ASSOCIATION OF 'HAMPTON MANOR'.

EXT P3 : TRUE COPY OF THE NOTICE DATED 31-07-2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXT P3(A) : TRUE COPY OF THE REPLY DATED WRONGLY TYPED AS 30-07-2014 SUBMITTED TO THE 3RD RESPONDENT.

EXT P4 : TRUE COPY OF THE ORDER DATED 10-12-2014 AND NUMBERED AS BTI 4089.10

EXT P4(A) : TRUE COPY OF THE DEMAND NOTICE DATED NIL NO.BT4089/10 ISSUED BY THE 3RD RESPONDENT.

EXT P5 : TRUE COPY OF THE JUDGMENT IN WP(C).NO.24524 OF 2009(I) DATED 28-11-2014.

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A.K.JAYASANKARAN NAMBIAR, J.

...

W.P.(C) No.4170 of 2015 (U)

...

Dated this the 10th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P4 order of assessment under the Kerala Building Tax, Act, 1975 [for short, 'KBT, Act'].

2. The petitioner, who is a builder, is aggrieved by Ext.P4 order, insofar as, in the said order, the assessing officer, while assessing several apartments in the said building as separate units for the purposes of assessment, has assessed the remaining apartments, in respect of which there was no evidence forthcoming with regard to the meeting of the cost of construction by the owners of the apartments concerned, as a separate unit for the purposes of assessment, and levied the tax in respect of the latter apartments on the petitioner, who is a builder. It is the contention of the petitioner in the writ petition that, in passing Ext.P4 assessment order on the petitioner, who is the builder, the assessing authority exceeded his jurisdiction, and therefore, Ext.P4 order was vitiated by an error of jurisdiction.

3. I have heard Sri.Bechu Kurian Thomas, learned counsel appearing for the petitioner and Smt.Sobha Annamma Eappen, learned Government Pleader for the respondents.

4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I find that Ext.P4 is an assessment order under the KBT Act, and the said Act provides for an effective alternative remedy by way of appeal against Ext.P4 order. Inasmuch as, the contentions raised in the writ petition against Ext.P4 order are mostly factual in nature, I am of the view that, the petitioner should be relegated to the alternate remedy of an appeal before the Revenue Divisional Officer [for short, 'RDO'] in terms of the Section 11 of the KBT Act. This is not a case where an interference with Ext.P4 order of assessment is warranted in proceedings under Article 226 of the Constitution of India. Accordingly, while dismissing the writ petition in its challenge against Ext.P4 order of assessment, I relegate the petitioner to the remedy of filing an appeal before the RDO in terms of Section 11 of the KBT Act against Ext.P4 order. While preferring the appeal, it would suffice for the petitioner to pay the first installment of the building tax amount confirmed against him by Ext.P4(a) order, namely an amount of Rs.90,735/- (Rupees ninety thousand seven hundred and thirty five only), for the purposes of maintaining the appeal before the RDO. The RDO shall, on receipt of the appeal, proceed to decide the issue on merits, after affording an opportunity to the petitioner for producing necessary documents to substantiate his contentions on merits. He shall pass orders in the matter within

an outer limit of four months from the date of receipt of a copy of this judgment. To enable the RDO to do this, I direct the petitioner to prefer his appeal against Ext.P4 order, together with all supporting documents, within two weeks from the date of receipt of a copy of this judgment.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/11/02/