IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 4892 of 2014 (J)

PETITIONER:

BIJU.M.K.,
W/O.SYED MUHAMMAD, AGED 46 YEARS,
VALIYAVEETTIL HOUSE, CHERANELLOORE P.O.,
ERNAKULAM DISTRICT.

BY ADV. SRI.T.K.AJITHKUMAR (VALATH)

RESPONDENT:

THE STATE OF KERALA,
REPRESENTED BY THE DEPUTY SECRETARY,
REVENUE DEPARTMENT (SPECIAL CELL),
SECRETARIAT, THIRUVANANTHAPURAM.

BY SENIOR GOVT. PLEADER SMT.SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

WP(C).No. 4892 of 2014 (J)

APPENDIX

PETITIONER(S)' EXHIBITS:

EXHIBIT P1: **TRUE COPY OF THE JUDGMENT IN WPC.NO.29425/10 DATED 29.9.2010.**

EXHIBIT P2: **TRUE COPY OF THE ORDER DATED 3.1.2014 ISSUED BY THE RESPONDENT.**

EXHIBIT P3 : **TRUE COPY OF THE LETTER DATED 27.4.2006 ISSUED BY THE ASSISTANT ENGINEER KSEB.**

EXHIBIT P4 : **TRUE COPY OF THE LICENSE DATED 12.5.2006 ISSUED BY THE CHERANELLOOR BRAMA PANCHAYATH.**

RESPONDENT(S)' EXHIBITS: - NIL

/TRUE COPY

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

....

W.P.(C).No.4892 of 2014

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Dated this the 20th day of January, 2015

JUDGMENT

The petitioner is the proprietor of a small scale industry. In the year 2005, the petitioner constructed a factory building on land owned by her. It is stated that, although the petitioner had initially commenced production in the factory thus set up, on account of scarcity of raw materials, the petitioner had to stop production in the factory. Thereafter, the building was let out to another person for conducting a steel furniture factory . Thus, the building in question continued to be used as a factory even after the petitioner stopped production in the factory that was initially set up by her. The issue in the writ petition is with regard to the levy of building tax on the said building. It is the case of the petitioner that, by virtue of the provisions of Section 3 of the Kerala Building Tax Act, 1975, in so far as the building continues to be used principally as a factory or workshop, the petitioner is entitled to an exemption from tax in respect of the said building. The facts would reveal that the claim of the petitioner for exemption, was referred to the State Government in accordance with Section 3(2) of the Building Tax Act. By Ext.P2 order, the State Government found that, although the building was used as a factory, the petitioner had leased out the building in favour of a 3rd person, and it was that person who was conducting the factory in the building and not the petitioner. In otherwords, the stand of the Government in Ext.P2 order is that insofar as the petitioner is not using the building as a factory, the petitioner will not be entitled to the benefit of the exemption envisaged in Section 3(1) (b) of the Kerala Building Tax Act, 1975. In the writ petition, Ext.P2 order is impugned by the petitioner.

2. A counter affidavit has been filed on behalf of the respondents wherein Ext.P2 order of the Government is sought to be justified on the reasons stated therein. It is pointed out that buildings which are rented out do not deserve building tax exemption, and that building tax exemption is granted by considering the principal use of the building as on the date of occurrence of the taxable event, and in the instant case the principal use of the building, as far as the owner was concerned, was not to run the factory but to make financial gain through the rental agreement.

3. I have heard Sri.T.K.Ajithkumar, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondent.

4. 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 the writ petition, in its challenge against Ext.P2 order, must necessarily fail. As per the provisions of Section 3 (1) (b) of the Kerala Building Tax Act, 1975, the provisions of the Act will not apply to buildings used principally for religious, charitable or educational purposes or as factories or workshops. The question to be considered in the instant case, however, is whether it is the particular use of the building, by anybody occupying the building, that qualifies it for exemption or whether it is the particular use of the building, by the owner, that qualifies it for an exemption. In my view, it is the particular use to which the building is put by the owner of the building, that would determine whether or not the use is one that qualifies the building for an exemption from building tax under the Kerala Building Tax Act, 1975. This is because the benefit of an exemption from building tax accrues to the owner of the building, and not to the person who is for the time being in occupation of the building. In the instant case, in as much as the owner of the building had rented out the building to a third person, and had collected rent from the said person for the occupation of the building, the use to which the owner put the building to cannot be viewed as a use of the building as a factory. It was the tenant that used the building as a factory and not the owner. In the light

of the aforesaid discussion, I do not see any reason to interfere with Ext.P2 order of the respondent. The writ petition in its challenge against Ext.P2 order fails and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns/