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. 5780 of 2015 (V)

PETITIONER(S):

M/S.SOUTHERN INVESTMENTS PVT. LTD.,
IST FLOOR, NANDANAM, PALACE ROAD,
EDAPALLY - 682 024,
REPRESENTED BY ITS DIRECTOR OPERATIONS,
SRI. 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):
----

1. **STATE OF KERALA,**
   REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE,
   SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. **THE DISTRICT COLLECTOR,**
   KOZHIKODE - 673 001.

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

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:

msv/

WP(C).No. 5780 of 2015 (V)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1-TRUE COPY OF THE NOTICE DATED 21/10/2011 ISSUED BY THE 3RD RESPONDENT TO S.I. BUILDERS.

EXHIBIT-P2-TRUE COPY OF THE REPLY LETTER DATED 02/11/2011 SUBMITTED BY THE OWNERS ASSOCIATION OF 'WEST COVE'.

EXHIBIT-P3-TRUE COPY OF THE NOTICE DATED 07/01/2012 ISSUED BY THE 3RD RESPONDENT TO ONE OF THE OWNERS.

EXHIBIT-P3(a)-TRUE COPY OF THE ANOTHER NOTICE DATED 07/01/2012 ISSUED BY THE 3RD RESPONDENT TO ANOTHER OWNER.

EXHIBIT-P4-TRUE COPY OF THE NOTICE DATED 10/07/2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT-P5-TRUE COPY OF THE REPLY DATED 23/07/2014 SUBMITTED TO THE 3RD RESPONDENT.

EXHIBIT-P6-TRUE COPY OF THE ORDER DATED 10/12/2014 AND NUMBERED AS BTI 57412/2011.

EXHIBIT-P6(a)-TRUE COPY OF THE DEMAND NOTICE DATED 10/12/2014 NO.BT-4089/2010 ISSUED BY THE 3RD RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A.K.JAYASANKARAN NAMBIAR, J.

..

W.P.(C) No.5780 of 2015 (V)

..

Dated this the 25th day of February, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 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.P6 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.P6 assessment order on the petitioner, who is the builder, the assessing authority exceeded his jurisdiction, and therefore, Ext.P6 order was vitiated by an error of jurisdiction.

3. I have heard Sri.Bechu Kurian Thomas, learned counsel appearing for the petitioner and Sri.Sudheesh Kumar, 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.P6 is an assessment order under the KBT Act, and the said Act provides for an effective alternative remedy by way of appeal against Ext.P6 order. Inasmuch as, the contentions raised in the writ petition against Ext.P6 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.P6 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.P6 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.P6 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.P6(a) order, namely an amount of Rs.89,100/- (Rupees eighty nine thousand and one hundred 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.P6 order, together with all supporting documents, within two weeks from the date of receipt of a copy of this judgment.

A.K.JAYASANKARAN NAMBIAR
JUDGE

mns

XXX