

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 6TH DAY OF MARCH 2015/15TH PHALGUNA, 1936

WP(C).No. 7173 of 2015 (V)

PETITIONER(S):

- 1. B.KOCHUMON,
PROPIETOR, M/S. PUTHUVEL ASSOCIATES, KMC-XXXII/36C,
NEAR KSRTC, NH-47, KAYAMKULAM,ALAPPUZHA DISTRICT.**
- 2. AJI BEEGUM,
PROPRIETRIX, M/S. CHIKOOS TRADING COMPANY, XXXII/291,
NEAR ROTARY CLUB, CHIRAKKADAVAM, KAYAMKULAM,
ALAPPUZHA.**

**BY ADVS.SRI.ASWIN GOPAKUMAR
SRI.ANWIN GOPAKUMAR
SMT.KALA G.NAMBIAR
SRI.K.AMAL NATH NAIK
SRI.ARJUN RADHAKRISHNAN NAIR
SMT.ANUSREE SURESH
SMT. DEEPTHI SUSAN GEORGE**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY (TAXES),
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DEPUTY TAHSILDAR (R.R),
DISTRICT COLLECTORATE, CIVIL STATION,
KOLLAM - 691 013.**
- 3. THE TAHSILDAR,
OFFICE OF THE TAHSILDAR, KARTHIKAPALLY,
ALAPPUZHA DISTRICT - 690 516.**
- 4. THE KERALA AGRICULTURAL INCOME TAX AND SALES TAX
APPELLATE TRIBUNAL, ADDITIONAL BENCH,
UNITY BUILDING, KOTTAYAM,
COLLECTORATE P.O., KOTTAYAM - 686 002,
REPRESENTED BY ITS SECRETARY.**

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5. VILLAGE OFFICER,
ARATTUPUZHA, ALAPPUZHA DISTRICT - 690 535.

6. VILLAGE OFFICER,
KAYAMULAM, ALAPPUZHA DISTRICT - 690 502.

BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 06-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF ASSESSMENT ORDER DT. 28.3.12 PASSED AGAINST PETITIONER NO.1.
- P2 - TRUE COPY OF ASSESSMENT ORDER DT. 31.5.12 PASSED AGAINST PETITIONER NO.2.
- P3 - TRUE COPY OF NOTICE DT. 20.7.12 ISSUED BY THE 2ND RESPONDENT.
- P4 - TRUE COPY OF NOTICE (IN FORM 1) DT. 03.11.12 ISSUED BY THE 2ND RESPONDENT.
- P5 - TRUE COPY OF NOTICE (IN FORM 10) DT. 03.11.12 ISSUED BY THE 2ND RESPONDENT.
- P6 - TRUE COPY OF THE JUDGEMENT DT. 19.12.13 PASSED BY THIS HONOURABLE COURT IN PWC NO. 30422/12.
- P7 - TRUE COPY OF ORDE FALSELY DT. 30.12.13 PASSED AGAINST THE 1ST PETITIONER BY THE 2ND RESPONDENT.
- P8 - TRUE COPY OF ORDER FALSELY DT. 30.12.13 PASSED AGAINST THE 1ST PETITIONER BY THE 2ND RESPONDENT.
- P9 - TRUE COPY JUDGMENT DT. 12.4.13 IN WA NO. 637/13.
- P10 - TRUE COPY OF APPEAL FILED BY THE 1ST PETITIONER DT. 15.7.13 BEFORE THE 4TH RESPONDENT TRIBUNAL.
- P11 - TRUE COPY OF APPEAL FILED BY THE 2ND PETITIONER DT. 15.7.13 BEFORE THE 4TH RESPONDENT TRIBUNAL.
- P12 - TRUE COPY OF THE STAY APPLICATION DT. 15.7.13 FILED ALONG WITH EXT. P11 APPEAL.
- P13 - TRUE COPY OF THE STAY APPLICATION DT. 15.7.13 FILED ALONG WITH EXT. P10 APPEAL.
- P14 - TRUE COPY OF NOTICE DT. 28.6.14 ISSUED BY THE 2ND RESPONDENT TO 1ST PETITIONER.
- P15 - TRUE COPY OF NOTICE DT. 15.2.14 ISSUED BY 2ND RESPONDENT TO 2ND PETITIONER.
- P16 - TRUE COPY JUDGMENT DT. 24.7.14 IN WPC N. 17372/14 FILED BY THE 1ST PETITIONER.

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- P17 - TRUE COPY JUDGMENT DT. 13.10.14 IN WPC NO. 26471/14 FILED BY THE 2ND PETITIONER.**
- P18 - TRUE COPY OF THE CONDITIONAL ORDER OF STAY DT. 10.12.14 ISSUED TO THE 1ST PETITIONER BY THE 4TH RESPONDENT TRIBUNAL.**
- P19 - TRUE COPY OF THE CONDITIONAL ORDER OF STAY DT. 10.12.14 ISSUED TO THE 2ND PETITIONER BY THE 4TH RESPONDENT TRIBUNAL.**
- P20 - TRUE COPY OF NOTICE OF SALE OF IMMOVABLE PROPERTY ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER DT. 16.2.15 (IN MALAYALAM).**
- P21- TRUE COPY OF NOTICE SALE OF IMMOVABLE PROPERTY ISSUED BY THE 3RD RESPONDENT TO THE 1ST PETITIONER DT. 16.2.15 (IN ENGLISH).**
- P22 - TRUE COPY OF NOTICE OF SALE OF IMMOVABLE PROPERTY ISSUED BY THE 3RD RESPONDENT TO THE 2ND PETITIONER DT. 16.2.15 (IN MALAYALAM).**
- P23 - TRUE OCPY OF NOTICE OF SALE OF IMMOVABLE PROPERTY ISSUED BY THE 3RD RESPONDENT TO THE 2ND PETITIONER DT. 16.2.15 (IN ENGLISH).**

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.A.TO.JUDGE

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A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.7173 of 2015

.....
Dated this the 6th day of March, 2015

J U D G M E N T

Against Exts.P1 and P2 Assessment orders, petitioner preferred Exts.P10 and P11 appeals before the 4th respondent. Along with the appeals, the petitioner had also preferred Exts.P12 and P13 stay petitions. The 4th respondent has now passed Exts.P18 and P19 orders on the stay petitions directing the petitioner to pay ½ of the amount as a condition for the grant of stay against recovery of the balance amounts confirmed against the petitioner vide Ext.Exts.P1 and P2 assessment order.

2. In the writ petition, the petitioner impugns the said conditional order of stay, inter alia, on the ground that the 4th respondent had not exercised his discretion validly while passing the said order.

3. Heard Sri.Aswin Gopakumar, the learned counsel for the petitioner and Smt.Sobha Annamma Eappen, the learned Government Pleader for the respondents.

On a consideration of the facts and circumstances of the case

and submissions made across the bar, I dispose the writ petition with the following directions:-

(i) In Exts.P18 and P19 orders, the 4th respondent does not state reasons as to why the petitioner was required to deposit the amounts as a condition for the grant of stay. This Court has held in **Archana Agencies v Commercial Tax Officer - 2014 (2) KLT 715** that an authority considering a stay petition is bound to give reasons even while granting conditional stay.

(ii) Exs.P18 and P19 orders are quashed and the 4th respondent is directed to reconsider the matter and pass fresh orders in the stay petition, within one month from the date of receipt of a copy of this judgment after hearing the petitioner.

(iii) Recovery steps, if any, initiated against the petitioner shall be kept in abeyance till such time as fresh orders are passed by the 4th respondent as directed above and communicated to the petitioner.

A.K.JAYASANKARAN NAMBIAR
JUDGE

