

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 9TH DAY OF MARCH 2015/18TH PHALGUNA, 1936

WP(C).No. 7347 of 2015 (P)

PETITIONER :

**M/S. DEEP WOODS RESORT,
PULIMOOTTIL ESTATE, NEAR LAKSHMI TEA ESTATE,
MUNNAR, IDUKKI DISTRICT - 685 612,
REP. BY ITS MANAGING PARTNER SRI.JOSE LUKE.**

**BY ADVS.SRI.TOMY EAPEN
SRI.JIJO PAUL KALLOOKKARAN**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, THIRUVANANTHAPURAM - 695 001.**
- 2. THE INTELLIGENCE OFFICER,
SQUAD NO. IV, IDUKKI AT NEDUMKANDAM - 685 553.**
- 3. DEPUTY COMMISSIONER (APPEALS) II,
KOTTAYAM - 686 001.**

R1 TO R3 BY SR GOVERNMENT PLEADER SMT. SOBHA ANNAMMA EAPEN

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 09-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - TRUE COPY OF THE PARTNERSHIP DEED DT. 01.11.13.
- P2 - TRUE COPY OF THE NOTICE NO. ISI IV/CR 26/13-14 DT. 07.07.14 ISSUED BY 2ND RESPONDENT.
- P3 - A TRUE COPY OF THE REPLY LETTER DT. 10.11.14.
- P4 - A TRUE COPY OF THE PENALTY ORDER DT. 05.11.14.
- P5 - TRUE COPY OF THE APPEAL MEMORANDUM.
- P6 - A TRUE COPY OF THE STAY ORDER NO. LTA NO. 108/2014, DT. 23.2.15.
- P7 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO ANITHA KURIAN BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE.
- P8 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO JOICE P STEPHEN BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE.
- P9 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO SUBRAMANIA AIYER BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE.
- P10 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO JOICE P. STEPHEN BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE.
- P11 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO ANITHA KURIAN BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE PANCHAYAT OFFICE.
- P12 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO SIMON BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE.
- P13 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO JOHN THOMAS BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE.
- P14 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO VARGHESE THOMAS BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE.
- P15 - A TRUE COPY OF THE OWNERSHIP CERTIFICATE ISSUED TO C.T. GEORGE BY THE PALLIVASAL GRAMA PANCHAYAT OFFICE.

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

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P.A.TO.JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C) No. 7347 of 2015 (P)

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Dated this the 9th day of March, 2015

JUDGMENT

The challenge in the writ petition is against Ext.P6 order of the 3rd respondent, whereby the 3rd respondent, in a stay petition filed along with an appeal against Ext.P4 penalty order under the Kerala Tax On Luxuries Act, 1976, directed the petitioner to remit 30% of the amount confirmed against him in Ext.P4 order as a condition for stay of recovery of the balance amount.

2. In the writ petition, the petitioner impugns Ext.P6 order on the ground that, while passing the said order, the 3rd respondent had not exercised his discretion validly in that, the contentions of the petitioner on merits were not considered.
3. On a perusal of Ext.P4 order, however, I find that, the 3rd respondent has taken into account the contention of the petitioner with regard to his liability to tax at a lower rate, and has found that, in the absence of the documents, which were not available even before the original authority, the contentions of the petitioner could be examined only at a later stage on verification of connected records. It was, therefore, that Ext.P6 order was passed directing the petitioner to remit only 30% of the amount confirmed against him by Ext.P4 penalty order.

4. On consideration of the said order of the 3rd respondent, I do not see any reason to interfere with the same in these proceedings under Article 226 of the Constitution of India. Accordingly, the writ petition in its challenge against Ext.P6 order fails, and it is dismissed.

The learned counsel for the petitioner would submit that, he requires some time to comply with the directions in Ext.P6 order. Taking into account the plea of financial hardship urged on behalf of the petitioner, I permit the petitioner to comply with the directions in Ext.P6 order on or before 31.03.2015. Save for this limited modification, with regard to the time to comply with Ext.P6 order, the writ petition in its challenge against Ext.P6 order is otherwise dismissed.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

AMV/09/03/

