IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 17TH DAY OF AUGUST 2015/26TH SRAVANA, 1937

WP(C).No. 7992 of 2014 (Y)

PETITIONER(S):

DEVADAS, AGED 48 YEARS,
S/O. AYYAPPAN, OOTTUMADATHIL HOUSE, EDAKKAL,
AMBALAVAYAL P.O., NENMENI, SULTHAN BATHERY,
WAYANADU DISTRICT.

BY ADV. SRI.A.V.JAMES

RESPONDENT(S):

1. THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY, LOCAL ADMINISTRATION,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

2. THE DISTRICT COLLECTOR,
WAYANAD DISTRICT, KALPETTA - 673 121.

3. THE TAHASILDAR,
REVENUE RECOVERY, SULTHAN BATHERY - 673 592.

4. THE VILLAGE OFFICER,
NENMENI VILLAGE, NENMENI POST, SULTHAN BATHERY,
WAYANAD DISTRICT - 673 592.

5. THE NENMENI GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETAYR, NENMENI POST, KOLIYADI,
SULTHAN BATHERY, WAYANAD DISTRICT - 673 592.

6. O.A GOPINATHAN, AGED 57 YEARS,
S/O AYYAPPAN, OOTTUMADTHIL HOUSE, EDAKKAL,
AMBALAVAYAL P.O., NENMENI, SULTHAN BATHERY,
WAYANADU DISTRICT - 673 593.

R1-R4 BY GOVERNMENT PLEADER SRI.GIKKU JACOB
R5 BY ADVS. SRI.M.P.ASHOK KUMAR
SRI.P.C.GOPINATH
R6 BY ADV. SRI.KURIAN JOSEPH (ARAKKUNNAM)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

msv/

WP(C).No. 7992 of 2014 (Y)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE PHOTOCOPY OF THE TAX RECEIPT DATED 04-10-2013.

EXHIBIT P2: THE PHOTOCOPY OF THE ROUGH SKETCH OF THE ARE OF THE BUILDING OF THE PETITIONER.

EXHIBIT P3: THE PHOTOCOPY OF THE DEMAND NOTICE DATED 22-02-2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT P4: THE PHOTOCOPY OF THE NOTICE DATED 19-02-2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT P5: THE PHOTOCOPY OF THE REPRESENTATION DATED 07-03-2014 ISSUED BY THE PETITIONER TO THE 5TH RESPONDENT.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

Msv/

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 7992 of 2014

Dated this the 17th day of August, 2015

JUDGMENT

The petitioner has approached this Court challenging assessment under Building Tax Act, 1975. The petitioner and 6th respondent are brothers. They constructed a building in a same compound conjointly. The construction is two independent constructions though there are common covered passage in between. It is also submitted that the construction has been made by two separate building permits. Therefore, it is submitted that the building cannot be treated as a composite unit for the purpose of assessment of building tax.

2. In the counter affidavit, it is stated that the major portion of the building is built seperately and the front portion of the building are jointly constructed and both buildings are connected with a passage.

3. The Building Tax Act defines building as follows:

Definitions - In this act, unless the context otherwise requires,-

(a) “Appointed day” means such date as the Government may for the purpose of this Act, specify by notification in the Gazette.

(b) “appellate authoirty” means an appellate authority appointed under Section 4;

(c) “assessee” means a person by whom building tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceeding under this Act has been taken for the assessment of the building tax payable by him;

(d) “assessing authority” means an assessing authority appointed under Section 4;

(e) “building” means a house, out-house, garage, or any other structure, or part thereof, whether of masonry, bricks, wood, metal or other material, but does not include any portable shelter or any shed constructed principally of mud, bamboos, leaves, grass or thatch or a latrine which is not attached to the main structure.

Explanation 1 - In the case of buildings constructed for providing housing accommodation for workers and their families residing in plantations, in pursuance of Section 15 of the Plantations Labour Act, 1951 (Central Act 69 of 1951) or buildings constructed under the

Government of India Subsidised Housing Scheme for industrial workers, each part of a building providing or intended to provide accommodation for a worker or a worker and his family shall be deemed to be a separate building.

Explanation 2 - Where a building consists of different apartments or flats owned by different persons and the cost of construction of the building was met by all such persons jointly, each such apartment or flat shall be deemed to be a separate building.

Therefore, the definition of the building would indicate that if the building is identifiable based on the ownership, necessarily, the assessment has to be based on the ownership of the building. Therefore, criteria that has to be adopted by the Tahsildar, is based on the ownership not based on the location of the building.

4. The petitioner and the 6th respondent are brothers. There is some understanding between them in regard to the use of the building and using certain common areas. But that does not in law make the building as one unit for the purpose of the Building Tax Act.

In that view of the matter, the impugned order is set aside and the following directions are issued :

i) The Tahsildar shall re-assess the building within a period of two months after notice to the petitioner and the 6th respondent.

ii) The Tahsildar shall also call for the relevant records from the Panchayath to determine whether the building is seperately owned by the petitioner.

iii) The petitioner shall also make available all the relevant records to show that the buildings are constructed seperately by the petitioner.

iv) Necessary orders shall be passed based on the above materials.

The writ petition is disposed of as above. No costs.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

bpr