IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 8604 of 2015 (A)

PETITIONER(S):

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1. BIJU MARKOSE,
   S/O. MARKOSE, RESIDING AT KALLUNGAL HOUSE,
   A.K.G.BHAVAN ROAD, KOTHAMANGALAM P.O.

2. DR.LIJI SOOSAN BIJU,
   W/I.NIJU MARKOSE, AGED 44 YEARS,
   RESIDING AT KALLUNGAL HOUSE,
   A.K.G.BHAVAN ROAD, KOTHAMANGALAM P.O.

3. THOMAS KULANJIPURAKKAL,
   S/O.MATHAI, AGED 76 YEARS,
   RESIDING AT KULANJIPURAKKAL, P.O.THIRUVALLA.

BY ADV. DR.GEORGE ABRAHAM.

RESPONDENT(S):

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1. THE THAHSILDAR,
   KOTHAMANGALAM, P.O. KOTHAMANGALAM,
   PIN-686 691.

2. THE REVENUE DIVISIONAL OFFICER,
   MOOVATTUPUZHA, RDO'S OFFICE,
   P.O.MOOVATTUPUZHA, PIN - 686 661.

3. THE DISTRICT COLLECTOR,
   ERNAKULAM DISTRICT, CIVIL STATION,
   P.O.KAKKANAD, ERNAKULAM - 682 090.

4. STATE OF KERALA,
   REPRESENTED BY SECRETARY TO GOVERNMENT,
   REVENUE DEPARTMENT, GOVERNMENT SECRETARIATE,
   THIRUVANANTHAPURAM - 695 001.

BY GOVERNMENT PLEADER SRI.R.RENJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXT. P1: TRUE COPY OF THE ASSESSMENT ORDER DATED 17.02.2009 PASSED BY THE FIRST RESPONDENT.

EXT. P2: TRUE COPY OF THE ORDER DISMISSING THE APPEAL DATED 16.10.2009.

EXT. P3: TRUE COPY OF THE ORDER PASSED BY THE DISRICT COLLECTOR IN THE REVISION PETITION FILED BY THE FIRST PETITIONER DATED 20.03.2010.

EXT. P4: TRUE COPY OF THE ORDER OF THE ADDITIONAL CHIEF SECRETARY DATED 18.08.2010 NUMBERED 35559/SC3/10/RD.

EXT. P5: TRUE COPY OF THE ASSINMENT DEED EXECUTED BY THE 1ST AND 2ND PETITIONERS IN FAVOUR OF THE 3RD PETITIONER REGISTERED AS DEED NO.4297/2007 IN THE KOTHAMANGALAM SUB REGISTRAR'S OFFICE.

EXT. P6: TRUE COPY OF THE BUILDING PERMIT ISSUED TO THE 1ST AND 2ND PETITIONERS FOR CONSTRUCING THE GROUND FLOOR OF THE RESIDENTIAL BUILDING IN QUESTION BY THE LOCAL AUTHORITY.

EXT. P7: ELECTRICITY BILL ISSUED CONCERNING THE GROUND FLOOR OF THE RESIDENTIAL BUILDING IN QUESTION TO THE FIRST PETITIONER BY KSEB.

EXT. P8: TRUE COPY OF THE ELECTRICITY BILL FOR THE FIRST FLOOR OF THE SAME BUILDING ISSUED BY KSEB TO THE 3RD PETITONER.

EXT. P9: TRUE COPY OF THE BILL FOR CONSTRUCTION CHARGES OF THE GROUND FLOOR OF THE FIRST AND SECOND PETITIONERS' HOUSE HAVING DOOR NO. 301 A OF THE KOTHAMANGALAM MUNICIPALITY ISSUED BY TEH BUILDING CONTRACTOR SRI. AJAYGHOSH P.K., DATED 01.08.2008.

EXT. P10: TRUE COPY OF THE BILL FOR CONSTRUCTION CHARGES OF THE FIRST FLOOR OF THE SAME BUILDING HAVING DOOR NO. 301B OF KOTHAMANGALAM MUNICIPALITY ISSUED BY THE BUILDING CONTRACTOR SRI. JAIMON V.T.

EXT. P11: TRUE COPY OF THE JUDGMENT IN WPC.NO.32906/2010 DATED 12.12.2012.

EXT. P12: TRUE COPY OF THE ORDER OF THE DISTRICT COLLECTOR DATED 05.04.2013.

EXT. P13: TRUE COPY OF THE ORDER OF THE TAHSILDAR DATED 27.05.2013.

EXT. P14: TRUE COPY OF THE ORDER OF THE RDO.

EXT. P15: TRUE COPY OF THE REVISION FILED BY THE FIRST PETITONER.

EXT. P16: TRUE COPY OF THE ORDER OF THE DISTRICT COLLECTOR DATED 26.12.2014

RESPONDENT(S)' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A. MUHAMED MUSTAQUE, J.

W.P(C). No. 8604 of 2015

Dated this the 7th day of August, 2015

J U D G M E N T

The petitioners 1 & 2 are husband and wife. They constructed a building in the year 2005. Thereafter, they assigned right over the property in favour of the 3rd petitioner by Ext.P5 document. The 3rd petitioner obtained a permission in his name and constructed an additional floor over the building.

2. The case of the petitioners is that, legally and functionally all buildings are separate entity and therefore each of the building has to be assessed separately for the building tax as well as luxury tax. Challenging the composite assessment of the entire building as a one unit, the petitioner has approached this Court in WP(C) No.32906/2010. By Ext.P11 judgment, this Court directed the authority to reconsider the matter. In paragraph 4 it is stated as follows:

> *"4. Heard; Government Pleader appearing on behalf of respondents. Documents produced in this writ petition will indicate that permission for construction of the first floor was obtained in the name of the 3rd petitioner, after execution of the assignment deed in favour of the 3rd petitioner. The petitioners*

> *have produced documents to show that the 1st floor of the building has got separate electric connection and water connection. They have also produced contract bills which will indicate that the cost of construction was met separately. On evaluation of these materials I am inclined to hold that separate floors of the building stands in distinct ownership and the construction was made by separate persons. Findings of the appellate authority that the building cannot be considered as separate because of the stair proved inside, cannot be sustained."*

3. After observing, this Court remanded the matter to the authority for fresh consideration. Thereafter, the matter was reconsidered by the Tahsildar. The Tahsildar found that, as per the nature of the building the entire building has to be treated as a one unit. Essentially, the reasoning given by the Tahsildar is based on the functional aspect of the building. It is noted that, there are staircase to connect all the buildings and it is also pointed out that petitioners are close relatives. This was challenged before the appellate authority as well as the revisional authority and the revisional authority confirmed the order of the Tahsildar.

4. The question in this matter has to be addressed is whether the 3rd petitioner has constructed a separate building

over and above the building constructed by petitioners 1 & 2. If 3rd respondent has constructed a separate building over the building constructed by the petitioners 1 & 2, necessarily, the building has to be treated as a separate building for the purpose of Building Tax as well as Luxury Tax. Inter connection of the building for the convenience of the inmates or residents is not a decisive for assessing the building as a single unit. The chargeable event under Section 5 is based on the ownership of the building. The title to the 3rd petitioner has been conveyed before the construction. It is in the prudence of a party to decide how a permission can be granted or how a right can be assigned to the 3rd party including to near relative over the air space of the building. Apparently it is presumed that, the building has to be assessed as a single unit because of close relationship and also appears to have been done to avoid building tax. Even if the attempt was to avoid any possible liability being imposed on the Building Tax Act, if such act is permissible within law, parties are free to do so. Therefore treating the building as one unit is illegal in the sense that the 3rd petitioner claims independent title over the building based on Ext.P5 assignment deed. Hence the impugned order is liable to be set aside.

5. Accordingly, the impugned order is set aside. The Tahsildar is directed to assess the building separately for building tax and luxury tax. Both building tax and luxury tax shall be levied based on the actual plinth area of each building.

This writ petition is disposed of.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE.

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