IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

THURSDAY, THE 19TH DAY OF MARCH 2015/28TH PHALGUNA, 1936

WP(C).No. 8842 of 2015 (E)
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PETITIONER(S):

BENNY EMMANUEL AGED 58 YEARS
S/O. LATE EMMANUEL, KARUMANCHERRY HOUSE
EZHUPUNNA PO, CHERTHALA TALUK,
ALAPUZHA DISTRICT

BY ADVS.SRI.C.RAJENDRAN
SRI.K.R.RANJITH

RESPONDENT(S):
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1 STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM - 695 001

2 REVENUE DIVISIONAL OFFICER
ALAPPUZHA, ALAPUZHA DISTRICT - 688 001

3 TAHSILDAR, TALUK OFFICE, CHERTHALA
ALAPUZHA DISTRICT - 688 001

4 VILLAGE OFFICER, KODAMTHURUTHU VILLAGE
CHERTHALA TALUK, ALAPPUZHA DISTRICT - 688524

R BY GOVERNMENT PLEADER, SMT. SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 8842 of 2015 (E)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1	**:**	**TRUE PHOTOCOPY OF THE ORDER OF ASSESSMENT OF LUXURY TAX. DATED 30.12.2010.**
EXHIBIT P2	**:**	**TRUE PHOTOCOPY OF THE CERTIFICATE DATED 01.02.2011 ISSUED BY THE KODAMTHURUTH GRAMA PANCHAYATH.**
EXHIBIT P3	**:**	**TRUE PHOTOCOPY OF THE ORDER DATED 10.10.2012 OF THE 2ND RESPONDENT.**
EXHIBIT P4	**:**	**TRUE PHOTOCOPY OF THE REPLY DATED 04.10.2013**
EXHIBIT P5	**:**	**TRUE PHOTOCOPY OF THE BUILDING TAX DEMAND NOTICE DATED 07.03.2015 ISSUED BY THE 2ND RESPONDENT.**
EXHIBIT P6	**:**	**TRUE PHOTOCOPY OF THE DEMAND NOTICE DATED 07.03.2015 ISSUED BY THE 2ND RESPONDENT.**

RESPONDENT'S EXHIBITS:-
------------------------------------- **NIL**

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 8842 of 2015

Dated this the 19th day of March, 2015

JUDGMENT

The challenge in the writ petition is against the revenue recovery notices issued to the petitioner for recovery of building tax and luxury tax amounts, that have been confirmed from the petitioner by Ext.P3 order of the first appellate authority. It is a case of the petitioner, that the construction of the building in question was completed prior to 1999, the year in which the levy of luxury tax under Section 5(A) of the Kerala Building Tax Act, was introduced. It is his contention, therefore, that insofar as the construction of the building completed prior to 1999, there was no justification for the levy of luxury tax. In the alternative, the petitioner prays for some time to discharge the liability due to the respondents as demanded in Exts.P5 and P6 notices issued under the Revenue Recovery Act.

2. I have heard Sri.C.Rajendran, the learned counsel appearing for the petitioner and also Smt.Sobha Annamma Eappen, the learned Government Pleader as well.

3. On a consideration of the facts and circumstance of the case and the submissions made across the bar, I find that the

challenge of the petitioner against the levy of the building tax and luxury tax for the assessment years 2010-11 and 2011-12 stand concluded against the petitioner by Ext.P3 order of the appellate authority. As regards the periods from 2012-13 to 2015-16, the petitioner has not preferred any appeal against the order demanding luxury tax. The petitioner can prefer an appeal only in respect of the demand of luxury tax for the assessment year 2015-16. Thus the challenge in the writ petition against levy of luxury tax for the years 2010-11 to 2014-15 cannot be entertained at this stage. As regards the levy of luxury tax for the year 2015-16, I make it clear that, if the petitioner files an appeal against the demand of luxury tax for the assessment year 2015-16, before the first appellate authority, under the Kerala Building Tax Act, then the said authority shall consider the appeal on merits and pass appropriate orders thereon after hearing the petitioner.

4. Taking note of the request of the petitioner for permission to pay the amounts demanded in Exts.P5 and P6 in installments, I permit the petitioner to pay the amounts demanded in Exts.P5 and P6, after excluding the demand of luxury tax for the assessment year 2015-16, in five equal and successive monthly

installments, commencing from 30.03.2015. Save for this limited modifications to Exts.P5 and P6 notices, the writ petition in its challenge against the said notices, is otherwise dismissed.

The petitioner shall produce a copy of the writ petition and the judgment before the 3rd respondent.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das