IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

FRIDAY, THE 27TH DAY OF MARCH 2015/6TH CHAITHRA, 1937

WP(C).No. 10027 of 2015 (C)

PETITIONER(S):

DR.VENUGOPAL C.R, AGED 60 YEARS
SON OF SRI.RAGHAVAN, CHELAKKATTU,
ALUMPARAMBU ROAD, THEKKENALUVAZHI,
PARAVUR.

BY ADVS.SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.
SMT.ANILA PETER
SRI.J.VIVEK GEORGE

RESPONDENT(S):
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY, REVENUE,
SECRETARIAT, THIRUVANANTHAPURAM 695 001.

2.THE TAHSILDAR, PARAVUR TALUK OFFICE,
NEAR COURT COMPLEX, PARAVUR 683 513.

3.THE VILLAGE OFFICER, PARAVUR VILLAGE,
PARAVUR 683 513.

R BY GOVERNMENT PLEADER SMT.SOBHA ANNAMMA EAPPEN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).NO.10027/2015

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORDER NO.BA 248/85 ISSUED BY THE COMMISSIONER OF PARAVUR MUNICIPALITY TO THE PETITIONER DATED 12.11.1985.

EXT.P2: COPY OF THE ORDER NO.H1-8241/08 OF THE 2ND RESPONDENT DATED 13.1.2015.

EXT.P3: COPY OF ORDER OF ASSESSMENT AND NOTICE ON DEMAND BEARING NO.H1 - 8241/08 ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 13.1.2015.

EXT.P4: COPY OF THE LETTER/CIRCULAR NUMBERED AS 38148/SC.3/2013/REVENUE DATED 25.9.2013.

RESPONDENTS EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.10027 OF 2015 (C)

Dated this the 27th day of March, 2015

J U D G M E N T

The challenge in the writ petition is against Ext.P2 order and Ext.P3 demand notice issued to the petitioner under the Kerala Building Tax Act. The challenge in the writ petition is essentially that, while passing orders of assessment, assessing the petitioner to building tax, the respondent Municipality has chosen to include areas over which there is a truss covering, in the plinth area for the purposes of assessment. Counsel for the petitioner would submit that the issue as to whether such areas could be included within the plinth area for the purpose of assessment to building tax, has already been decided in a plethora of judgments, and the assessing authority ought to have followed the said judgments while completing the assessment against the petitioner.

2. I have heard the learned counsel appearing for the petitioner as also the learned Government Pleader appearing for the respondents.

3. On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find that in Ext.P2 order and Ext.P3 demand notice, the issue of whether areas covered by truss work can be included in the plinth area of the building has not been gone into by the assessing authority. As a matter of fact, there is no reference to any of the judgments of this Court which cover the issue. Under the said circumstances, I quash Exts.P2 and P3 inasmuch as they are vitiated by a patent non-application of mind, and I direct the 2nd respondent to pass fresh orders of assessment in relation to the building owned by the petitioner, after considering the objections of the petitioner with regard to the inclusion of certain areas in the plinth area of the building for the purposes of building tax assessment. The 2nd respondent shall pass fresh orders, as directed, within a period of two months from the date of receipt of a copy of this judgment, after hearing the petitioner.

The writ petition is disposed as above.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp